CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 28 DECEMBER 14, 1994 NO. 50

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

U.S. Customs Service

Treasury Decisions

19 CFR Part 141

(T.D. 94–95)

ESTABLISHMENT OF CONDITIONAL RELEASE PERIOD FOR TEXTILES AND TEXTILE PRODUCTS

RIN 1515–AB39

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish a conditional release period of 180 days on entries of textiles and textile products for the sole purpose of facilitating a determination as to whether the country of origin of the entered goods has been accurately represented to Customs. This amendment will permit Customs to issue Notices of Redelivery to importers of textiles and textile products within 30 days after the end of the conditional release period if investigation or information reveals that the merchandise was claimed to originate in a country where little or no manufacturing processes occurred in order to avoid quota or visa admissibility requirements. An importer who fails to redeliver the merchandise to Customs custody would be liable for liquidated damages under the terms of the Basic Importation and Entry Bond.

EFFECTIVE DATE: January 3, 1995.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202–482–6950.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 30, 1994, Customs published a notice in the Federal Register (59 FR 14808) which proposed to amend Part 141 of the Customs Regulations (19 CFR Part 141) to provide for a conditional release period of 180 days on all textiles and textile products that are subject to the provisions of section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854). The notice referred to the significant enforcement problem regarding textiles and textile products that are imported into the

United States in violation of quota restrictions or without the appropriate visa from the country of origin. The notice stated that this problem involves merchandise that is the product of a country to which stringent quotas or visa requirements apply and that is transshipped through a second country having less rigorous quota and visa standards, often in order to facilitate the making of a false claim, upon importation into the United States, that the merchandise is a product of the country through which it was transshipped and therefore subject to the more lenient quota and visa entry standards applicable to products of that country. The notice pointed out two principal obstacles to effective enforcement efforts in such cases: (1) While the penalty provisions of section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), are in principle available for assessment against any party who has committed fraud, gross negligence or negligence in connection with the entry of such transshipped merchandise, it is not always possible to establish the requisite culpability; and (2) the other alternative, namely the issuance of a Notice of Redelivery followed by the issuance of a claim for liquidated damages for a failure to redeliver, is often not available because in many cases the violation is discovered only after the close of the time period provided in the regulations for issuance of a Notice of Redelivery (for textiles and textile products and other merchandise for which a conditional release period is not specified in the regulations, issuance must be within 30 days of the release of the merchandise from Customs custody).

In order to address these problems, Customs proposed to amend § 141.113 of the Customs Regulations (19 CFR 141.113) by adding a new paragraph (b) to provide for a specific conditional release period of 180 days from the date of release for all textiles and textile products subject to section 204 of the Agricultural Act of 1956. Thus, under the terms of § 113.62(d) of the Customs Regulations (19 CFR 113.62(d)), Customs would then have up to 30 days from the end of the conditional release period to issue a Notice of Redelivery whenever it is determined that a textile or textile product is not entitled to admission into the commerce of the United States. Failure to redeliver merchandise within the time period specified in the Notice of Redelivery (generally 30 days from the date of the Notice) would result in the assessment of a claim for liquidated damages under the Basic Importation and Entry Bond as provided in § 113.62(k) of the regulations. In addition, the notice set forth proposed conforming changes to § 141.113 as a consequence of the addition of the proposed new paragraph (b). The notice invited the public to submit written comments on the proposals, and the public comment period closed on May 31, 1994.

Analysis of Comments

Twenty-seven comments were received. Four of the commenters were entirely in favor of the proposed regulatory amendments as written and suggested no changes. Twenty-three commenters opposed the proposals. The comments in opposition are discussed below.

Comment:

All of the commenters opposing the proposed rule indicated that the proposed conditional release period of 180 days on all textile importations did not take into account the commercial reality of textile importation and distribution. Textile and apparel sales are subject to seasonal requirements and stylistic variables, and the commenters charged that it would be commercially untenable to maintain on hand seven months worth of inventory in order to be insulated from any liability for possible redelivery violations. Many of the commenters noted that they operate in a "just in time" environment so that as little inventory as possible remains on hand. It was generally agreed upon by the negative commenters that the proposed rule would impose a significant economic burden on the legitimate importer but that the nefarious importer would continue to operate without regard for any possible consequence.

Customs response:

Customs recognizes that some potential economic risk would result from the establishment of the 180-day conditional release period. As noted in the analysis of the following comment made with regard to the proposal, Customs acknowledges the potential economic hardship that might be caused by a sweeping regulation and, therefore, has drawn the conditions upon which redelivery can be based narrowly so as to affect as few entries as possible. In weighing the economic harm caused by illegally transshipped goods against the potential liability incurred by an importer because of the extension of the 30-day redelivery period, Customs believes that this objection to the proposed amendment does not constitute a sufficient basis for not proceeding with a final rule on this matter.

Comment:

All of the commenters opposed to the proposed regulation stated that it was overly broad, noting that the proposed text would apply a 180-day conditional release period to all textile and apparel entries on any issue of admissibility, including issues of classification, valuation or duty assessment. The following observation was typical of the comments submitted on this point: Although the release period modification was intended to address the assumed abundance of transshipment violations, importers may be exposed to liability merely for instances of classification/quota category disputes; Customs will therefore have the opportunity to penalize importers for matters independent of the intentions of the proposal.

Customs response:

Customs agrees that the sweep of the proposed regulation is too broad. Accordingly, the regulatory text in question, as set forth below, has been redrafted to establish a conditional release period of 180 days for textiles and textile products only for purposes of determining whether a transshipment violation has occurred. This narrowing of the

scope of the regulation will serve to alleviate many of the concerns of risk raised by the commenters. The 180-day period would not be applicable to issues of classification, valuation or other issues of admissibility not related to a transshipment violation.

Comment:

Two commenters suggested that the proposed rule directly violates section 621 of the Customs Modernization (hereinafter the "Mod Act") provisions contained in Title VI of the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057). These commenters asserted that under the Mod Act provisions and the intent of the Congress expressed therein, an importer is held to a standard of "reasonable care" in discharging those entry and related activities for which he is responsible. Failure to maintain that standard will result in assessment of penalties for violation of the provisions of 19 U.S.C. 1592. The commenters claimed that Customs, through liquidated damages assessment, is gutting the reasonable care concept and imposing a strict liability standard on a situation which Customs admits cannot be sanctioned through a 1592 action due to a failure of proof.

Customs response:

Customs does not agree with this analysis. By acting as importer of record, an importer or broker knowingly accepts the terms of the Basic Importation and Entry Bond. When a transshipment violation occurs, the importation of violative goods into the United States results. Compensation for that harm, which is the purpose of a liquidated damage claim, is not readily quantifiable and need not be based upon a finding of culpability.

Liability under section 1592 is based upon a finding of culpability and is not limited to the importer of the goods. The penalty provisions reach importers, brokers, manufacturers, shippers, and the like, and may also include aiders and abettors of violations. These penalties serve to punish violators and deter future violative conduct but they do not serve to compensate the Government for harm. It is inapposite to impose standards of reasonable care promulgated by the Mod Act to a bond violation situation. Customs does not believe that the proposed regulation is in conflict with the Mod Act and therefore sees no reason to modify or withdraw the proposed rule based on this comment.

Comment:

Several commenters suggested that imposition of liquidated damages equal to three times the value of merchandise which is not redelivered serves to punish rather than compensate when the violation involves illegal transshipment of textile merchandise. These commenters noted that an importer could be found to be negligent and incur a 1592 penalty but pay considerably less than a three-times-the-value-of-the-merchandise claim assessed as liquidated damages.

Customs response:

Illegally transshipped textile merchandise, while prohibited in nature, does not cause a health or safety hazard to the general public. Accordingly, Customs agrees with the thrust of this comment and, therefore, the regulatory text as set forth below, has been redrafted to limit any liquidated damages assessment for transshipment violations to the value of the merchandise involved in the breach.

CONCLUSION

Accordingly, for the above reasons, Customs has determined that the proposed regulatory changes should be adopted as a final rule, subject to the textual modifications to the proposed regulatory text as discussed in the above comment analysis and as set forth below.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.),* it is certified that the regulatory amendments will not have a significant economic impact on a substantial number of small entities. Establishment of a conditional release period for textiles and textile products, which is necessary for law enforcement purposes, will affect only the relatively small percentage of importers who import such merchandise contrary to law. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

LIST OF SUBJECTS IN 19 CFR PART 141

Bonds, Customs duties and inspection, Entry procedures, Imports, Release of merchandise.

AMENDMENTS TO THE REGULATIONS

Accordingly, for the reasons set forth above, Part 141, Customs Regulations (19 CFR Part 141), is amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

2. Section 141.113 is amended by redesignating paragraphs (b) through (g) as (c) through (h), by adding the words "or (b)" after the words "paragraph (a)" in newly designated paragraph (c), and by adding a new paragraph (b) to read as follows:

§ 141.113 Recall of merchandise released from Customs custody.

* * * * * * *

(b) *Textiles and textile products.* For purposes of determining whether the country of origin of textiles and textile products subject to the provisions of § 12.130 of this chapter has been accurately represented to Customs, the release from Customs custody of any such textile or textile product shall be deemed conditional during the 180-day period following the date of release. If the district director finds during the conditional release period that a textile or textile product is not entitled to admission into the commerce of the United States because the country of origin of the textile or textile product was not accurately represented to Customs, he shall promptly demand its return to Customs custody. Notwithstanding the provisions of paragraph (h) of this section and § 113.62(k)(1) of this chapter, a failure to comply with a demand for return to Customs custody made under this paragraph shall result in the assessment of liquidated damages equal to the value of the merchandise involved.

* * * * * * *

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: October 24, 1994.
DENNIS M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, December 2, 1994 (59 FR 61798)]

(T.D. 94–96)

REFUSAL TO ACCEPT NEW BONDS UNDERWRITTEN BY AMERICAN BONDING COMPANY

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice informs the public that the District Director, Miami, Florida has issued a letter to the American Bonding Company informing the surety that new single transaction or continuous bonds underwritten by that company will not be accepted by the district pursuant to 19 CFR 113.38.

FOR FURTHER INFORMATION CONTACT: Carmen Carvajal, Fines, Penalties and Forfeiture Officer (305) 869–2870.

SUPPLEMENTARY INFORMATION: Below is set forth a letter sent by the District Director, Miami, Florida, informing the American Bond-

ing Company that new single transaction or continuous bonds underwritten by that company will no longer be accepted by the district. The letter is being published pursuant to 19 CFR 113.38(c)(5).

Dated: November 18, 1994.

WILLIAM G. ROSOFF,
Acting Director,
Commercial Rulings Division.

[Text of letter]

[CERTIFIED MAIL]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Miami, FL, November 7, 1994.

AMERICAN BONDING COMPANY
6245 East Broadway, #600
Tucson, AZ 85711

GENTLEMEN:

You have failed to respond to the Regional Commissioner's letter of September 23, 1994, requesting you to show cause why you have been significantly negligent in payment on outstanding debts incurred by you firm as surety under the terms of your Customs Bonds. Additionally, you have failed to pay those debts.

As a result of this delinquency, I will cease accepting new single transaction or continuous bonds written by your company. This sanction will become effective November 18, 1994, and under the provisions of 19 CFR 113.38(c)(6), shall remain in effect for a minimum of five (5) days or until all outstanding delinquencies are resolved, whichever is later.

Any questions regarding this matter should be referred to Carmen Carvajal, FP&F Officer, at (305) 869–2870.

D. LYNN GORDON,
District Director,
Southeast Region.

(T.D. 94–97)

TARIFF CLASSIFICATION OF IMPORTED MAGNETS

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice of a change of position regarding the classification of imported articles consisting of small metal or barium ferrite magnets placed in a plastic, textile or ceramic housing (sometimes referred to as refrigerator or household magnets), under the Harmonized Tariff Schedule of the United States (HTSUS).

Customs has ruled in the past that based on the composition of the magnet, it was classified either as an article of metal under heading 7323, HTSUS, or as an article of ceramic (barium ferrite) under heading 6912, HTSUS.

Customs now believes that because composite goods consisting of magnets and a textile, plastic or ceramic housing or shell, have the essential character of magnets, they are properly classifiable as such under heading 8505, HTSUS. The result of this change of position is a small decrease in the rate of duty on the subject merchandise.

DATE: The change in tariff classification resulting from this decision will be effective on or after December 5, 1994 for all entries not finally liquidated as well as to merchandise entered for consumption or withdrawn from warehouse on or after this date.

FOR FURTHER INFORMATION CONTACT: Robert F. Altneu, Office of Regulations and Rulings (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Magnets are specifically provided for in heading 8505, HTSUS. In several rulings, we have held that articles consisting of a magnet placed within a decorative housing or shell made of plastic, ceramic, or textile (sometimes referred to as refrigerator or household magnets), were composite goods. Classification was considered under the following subheadings and duty rates:

6912.00.50: Ceramic tableware, kitchenware, other household articles * * *: [o]ther

The general, column one rate of duty is 7 percent *ad valorem*.

7323.99.90: Table, kitchen or other household articles and parts thereof, of iron or steel * * *: [o]ther: [o]ther: [n]ot coated or plated with precious metal: [o]ther: [o]ther * * *.

The general, column one rate of duty is 3.4 percent *ad valorem*.

8505.19.00: Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization * * *: [p]ermanent magnets and articles intended to become permanent magnets after magnetization: [o]ther * * *.

The general, column one rate of duty is 4.9 percent *ad valorem*.

Because the article was a composite good consisting of metal, ceramic, textile, and/or plastic, it was prima facie classifiable under two or more headings. Customs would then apply GRI 3(b) to determine the essential character of the article.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the Customs Cooperation Council's official interpretation of the HTSUS. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN VIII to GRI 3(b) states as follows:

> [t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In the rulings issued, Customs concluded that the magnet imparts the essential character to the article. The plastic, textile or ceramic portion of the article merely embellished the article and acted as a decorative selling feature.

However, Customs precluded classification of the article under heading 8505, HTSUS, which specifically provides for permanent magnets based upon a portion of EN 85.05. EN 85.05, page 1341, states in pertinent part as follows:

> [t]his heading does not cover: [e]lectro-magnets, permanent magnets or magnetic devices of this heading, when presented with machines, apparatus, toys, games, etc., of which they are designed to form part (classified with those machines, apparatus, etc.)

Based upon this portion of EN 85.05, we held that the magnets were designed to form part of the article. It was concluded that because the magnets are presented with and incorporated into a textile, ceramic or plastic article (i.e., a hook, fruit caricature or advertising slogan), they

are precluded from classification in heading 8505, HTSUS. Because the essential character of the article is the magnet, the article would then be classified based upon the composition of the magnet as an article of metal under heading 7323, HTSUS, or as an article of ceramic (barium ferrite) under heading 6912, HTSUS.

Several rulings were issued following this rationale. *See* HQs 082500, 083130, 083133, 083134, 089332, 089333, 089760; NYs 860370, 862523. This list may not be exhaustive. There may be others issued by Customs in New York or in the various Customs districts under the pre-entry classification procedures.

In a notice published in the Federal Register on June 28, 1994 (59 FR 33320), Customs furnished notice that the classification of the subject merchandise was under review and requested comments from interested parties.

Only two submissions were received in response to the notice. While both agreed to the proposed change of position, they each provided a substantive discussion of the legal issues involved.

DISCUSSION OF COMMENTS

Comment:

Articles consisting of small metal or barium ferrite magnets placed in a plastic, textile or ceramic housing (sometimes referred to as refrigerator or household magnets) are eo nomine provided for under heading 8505 as magnets, based upon GRI 1. *See* O.C.O.D. 89–1, 23 Cust. Bull. 36, dated September 6, 1989.

Response:

Customs disagrees that the subject merchandise is classifiable under GRI 1. Magnets entered unattached to any other object are eo nomine classifiable under heading 8505, HTSUS. Magnets placed in a plastic, textile or ceramic housing are prima facie classifiable under headings 8505, 3926, 6307, or 6912, HTSUS, respectively. Because the subject merchandise is comprised of two or more articles classified under separate headings, classification cannot be determined by use of GRI 1. Therefore, GRI 3 must be used.

Furthermore, O.C.O.D. 89–1 was issued as guidelines on the proper interpretation and application of GRI 1 to classify merchandise to the importing community. Since the enactment of the HTSUS, Customs has consistently issued binding rulings which set forth the proper interpretation of articles which are prima facie classifiable in two or more headings under the HTSUS according to GRI 3.

Comment:

The proposed change in the method of classification of the subject merchandise should apply to all relevant protested and unliquidated entries, as well as to future entries.

Response:

Because Customs believes that our previous interpretation was incorrect and this change in position results in a slight reduction in

duties, we believe that the benefit should be available to importers immediately for all entries not finally liquidated.

CONCLUSION

It is now our position that EN 85.05 has been misinterpreted. The exclusion in EN 85.05 is designed to cover only those articles in which the magnet is merely an insignificant part of a larger article (i.e., kitchen cabinets with a magnet to keep the doors closed). In such cases, the magnet portion is ignored for classification purposes, and the article (i.e., kitchen cabinet) is classified as if the magnet were not present.

In regards to articles consisting of a metal or barium ferrite magnet and a plastic, textile or ceramic shell or housing (i.e., a hook, fruit caricature or an advertisement slogan), Customs believes that they are composite goods. Customs will continue to apply an essential character analysis pursuant to GRI 3(b) to find the essential character of the merchandise. If the shell or housing portion of the article merely embellishes the product and acts as a decorative selling feature, and the essential character is imparted by the magnet, then the article is properly classifiable in heading 8505, HTSUS, as a permanent magnet. This change in position only relates to how Customs interprets the exclusion stated in EN 85.05.

The change in tariff classification resulting from this decision will be effective immediately for all entries not finally liquidated as well as to merchandise entered for consumption or withdrawn from warehouse on or after this date.By this action, those rulings which are inconsistent with our current position are revoked.

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: November 22, 1994.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, December 5, 1994 (59 FR 62451)]

U.S. Customs Service

General Notices

TARIFF CLASSIFICATION OF WATER RESISTANT GARMENTS WITH NON-WATER RESISTANT HOOD

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Proposed change of practice; solicitation of comments.

SUMMARY: Pursuant to section 177.10(c)(1) of the Customs Regulations (19 CFR 177.10(c)(1)), this notice advises the public that Customs proposes a change of practice regarding the classification of imported merchandise consisting of water resistant jackets with non-water resistant hoods, under the Harmonized Tariff Schedule of the United States (HTSUS).

Customs has ruled in the past that water resistant garments with non-water resistant hoods were classified as water resistant garments as per the terms of Chapter 62, HTSUS.

After a thorough review of the issue, it is Customs opinion that the permanently attached hood of a garment is an integral part of the garment as a whole. As such, if the hood is not similarly coated (in the same manner as the jacket), the garment is precluded from classification as a water resistant garment. The result of this proposed change of practice would be an increase in the rate of duty on the subject merchandise.

By this action, those rulings which are inconsistent with our current practice would be revoked. Before adopting this proposed change, consideration will be given to any written comments timely submitted in response to publication of this document.

DATES: Comments must be received on or before February 3, 1995.

ADDRESS: Written comments (preferably in triplicate) may be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Textile Classification Branch, (202) 482–7050.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative chapter notes.

Chapter 62, HTSUS, provides for articles of apparel and clothing accessories not knitted or crocheted. Additional U.S. Note 2 to Chapter 62, HTSUS, in addressing the term "water resistant", refers to garments classified within certain subheadings of the chapter. On separate occasions, Customs determined that the hood was a peripheral aspect of the garment.

Accordingly, when a water resistant analysis was conducted, no consideration was given to the hood, i.e., whether it was or was not water resistant.

Several rulings were issued following this rationale. *See* DD 888234, DD 884731, NY 887628 and NY 874163. This list may not be exhaustive. There may be others issued by Customs in the various Customs districts.

PROPOSED CHANGE OF PRACTICE

As a result of our reexamination of the issue we find that Additional U.S. Note 2 to Chapter 62, HTSUS, has not been applied to its proper effect. There is nothing in the language of that Note which suggests that only a portion of a garment be made water resistant in order for the entire garment to be classifiable as water resistant. The test, as it is written, applies to the complete garment. On water resistant garments, the hood contributes materially to the garment's usefulness and, essentially, is an integral part of the garment itself. The hood adds significant additional protection to the wearer in times of inclement weather.

This change in practice only relates to water resistant garments with non-water resistant hoods that are an integral part of the garment (i.e. permanently attached to the garment).

AUTHORITY

This notice is published in accordance with section 177.10, Customs Regulations (19 CFR 177.10).

COMMENTS

Before adopting this proposed change in practice, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m at the Office of Regula-

tions and Rulings, Franklin Court, 1099 14th Street, N.W. Suite 4000, Washington, DC.

GEORGE J. WEISE,
Commissioner of Customs.

Approved: November 16, 1994.

DENNIS M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, December 5, 1994 (59 FR 62452)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, November 29, 1994.

The following documents of the United States Customs Service, Office of Commercial Operations, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

REVOCATION OF CUSTOMS RULING LETTER RELATING TO THE TARIFF CLASSIFICATION OF LEATHER PORTFOLIOS CONTAINING NOTE PADS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of two leather portfolios containing note pads. Notice of the proposed revocation was published on October 19, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 42.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Carlos Halasz, Textile Classification Branch, Office of Regulations and Rulings, (202) 482–7059.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 19, 1994, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 42, proposing to revoke District Ruling (DD) 876202, issued July 28, 1992, wherein two leather portfolios containing note pads were classified in heading 4202, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides in part for attache cases, briefcases and similar containers. One comment was received. The comment claimed that the portfolios have the character of containers and possess features commonly found in briefcases

and attache cases. Accordingly, it is contended that they are *ejusdem generis* with containers of heading, 4202, HTSUSA.

After careful review of the points raised by the commentator, we find that the portfolios possess the character of covers or jackets for the note pads and are not *ejusdem generis* with articles such as attache cases or briefcases which are set forth in heading 4202, HTSUSA. Rather, they are properly classifiable as memorandum pads of subheading 4820.10.2020, HTSUSA.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking DD 876202, dated July 28, 1992, to reflect the proper classification of the merchandise as memorandum pads of subheading 4820.10.2020, HTSUSA. Headquarters Ruling Letter (HRL) 956940, revoking DD 876202, is set forth in the Attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c) (1)).

Dated: November 25, 1994.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 25, 1994.

CLA–2 CO:R:C:T 956940 ch
Category: Classification
Tariff No. 4820.10.2020

DAVID C. NICHOLSON
IMPORT MANAGER
4431 William Penn Highway
Murrysville, PA 15668

Re: Reconsideration of DD 876202; classification of stationery articles; memorandum pad.

DEAR MR. NICHOLSON:

This is in response to your letter of August 11, 1994, requesting reconsideration of District Ruling (DD) 876202, dated July 28, 1992, in which you were advised of the classification of two articles described as writing pads under the Harmonized Tariff Schedule of the United States (HTSUS). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as

amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed revocation of DD 876202 was published October 19, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 42.

Facts:

The submitted samples, styles 1000–10 and 1000–13, are portfolios which measure approximately 13½ inches by 10 inches by 1 inch. They possess an outer surface of bonded leather and man-made vinyl coskin, respectively, and are secured by means of a zipper closure. Each sample features an exterior full wall flat pocket. A note pad measuring 8½ inches by 11 inches is inserted into a slot of one interior wall. A pen holder has been placed at the spine. The opposite interior wall includes a pocket with a tapered accordion style gusset, a zippered pocket, two open pockets, an identification card holder and five slots for holding business cards.

In DD 876202, styles 1000–10 and 1000–13 were classified respectively in subheadings 4202.11.0030 and 4202.12.2035, HTSUS, as containers similar to attache cases and briefcases.

Issue:

What is the proper tariff classification for the subject merchandise?

Law and Analysis:

Heading 4820, HTSUS, provides in part for diaries, notebooks, memorandum pads and other articles of stationery, of paper or paperboard. The Explanatory Note (EN) to heading 4820 states in pertinent part, at page 687, that:

> This heading covers various articles of stationery, other than correspondence goods of heading 4817 and the goods referred to in Note 9 to this Chapter. It includes:
>
> * * * * * * *
>
> (1) Registers, account books, note books of all kinds, order books, receipt books, copy books, diaries, letter pads, memorandum pads, engagement books, address books and books, pads, etc. for entering telephone numbers.
>
> * * * * * * *
>
> (3) **Binders designed for holding loose sheets,** magazines, or the like (e.g. clip binders, spring binders, screw binders, **ring binders), and folders, file covers,** (other than box files) **and portfolios.**
>
> * * * * * * *
>
> (8) **Book covers (binding covers and dust covers)**, whether or not printed with characters (title, etc.) or illustrations.
>
> * * * * * * *
>
> **The goods of this heading may be bound with material other than paper (e.g. leather, plastics or textile material) and have reinforcements or fittings of plastics, etc.** (Emphasis added).

This language indicates that articles of 4820, HTSUS, include portfolios, ring binders and folders designed for holding papers. They also include articles of the heading that are bound with leather or textile material. Heading 4820 encompasses articles of stationery with jackets or covers.

On the other hand, the EN to heading 4202, HTSUS, at page 613, provides in part that the heading does not cover:

> Articles which, although they may have the character of containers, are not similar to those enumerated in the heading, for example, book covers and reading jackets, file-covers, document-jackets * * * and which are wholly or mainly covered with leather, sheeting of plastics, etc. Such articles fall in heading 42.05 if made of (or covered with) leather or composition leather, and in other chapters if made of (or covered with) other materials.

Thus, articles which may be regarded as containers are excluded from heading 4202 if they have the character of covers or jackets.

In Headquarters Ruling Letter (HRL) 951076, dated March 18, 1992, issued to Leeds Leather Products, we classified the "President Writing Pad," which was described as follows:

> The second item, "President Writing Pad," is a 9½ by 12½ inch leather folder containing an 8½ by 11 inch pad of lined writing paper. The cardboard backing sheet of the pad

is slipped into a large pocket inside the leather folder, which also incorporates a pen holder and an additional pocket for loose papers.

In that decision, we noted that memorandum pads were classifiable in heading 4820, HTSUS. Citing lexicographic sources, we concluded that a memorandum pad is "an article featuring a block of blank pages attached at one end to facilitate note taking." We note that the HTSUS does not require a memorandum pad to be bound. The paper writing pad met the description of a memorandum pad. Moreover, we determined that the leather folder merely emphasized the primary purpose of the article, which was to provide a convenient and organized method to take notes. Accordingly, the "President Writing Pad" was classifiable as a memorandum pad of subheading 4820.10.2020, HTSUS.

Styles 1000–10 and 1000–13 are substantially similar in design and function to the "President's Writing Pad." Although the portfolios are somewhat more elaborate than the folder at issue in HRL 951076, they function primarily as organizational aids for note taking and retain the character of covers or jackets for the note pads. We recognize that these items possess some features which may also be found in an attache case or a briefcase (e.g. gussetted pocket). However, the exterior and interior pockets are essentially flat and are suitable only for loose papers, paper clips, business cards, small floppy discs and other flat items. Based on the foregoing, we conclude that styles 1000–10 and 1000–13 have the character of jackets and covers which are excluded from heading 4202, HTSUS. Consequently, they are classifiable as memorandum pads of subheading 4820.10.2020, HTSUS.

Holding:

Styles 1000–10 and 1000–13 are classifiable under subheading 4820.10.2020, HTSUS, which provides for memorandum pads, letter pads and similar articles. The general column one rate of duty is 4 percent *ad valorem*.

DD 876202, dated July 28, 1992, is hereby revoked. In accordance with section 625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decision pursuant to section 625 does not constitute a change of practice of position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED PARTIAL REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF SHIELDED FABRIC

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed partial revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to partially revoke a ruling pertaining to the tariff classification of shielded fabric. Comments are invited on the correctness of the proposed

DATE: Comments must be received on or before January 13, 1995.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., N.W., Suite 4000, Washington DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Karateew, Textile Classification Branch, (202) 482–7050.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(C)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to partially revoke a ruling pertaining to the tariff classification of shielded fabric. Comments are invited on the correctness of the proposed ruling.

In Headquarters Ruling Letter (HRL) 086337, dated April 19, 1990, three samples of shielded fabric were classified under subheading 5407.60.2025 (now provided for in subheading 5407.60.9925 of the 1994 Harmonized Tariff Schedule of the United States Annotated (HTSUSA)), which provides for, *inter alia,* woven fabrics of synthetic filament yarn. In that ruling Customs determined that as the subject fabric was not for technical use, classification was precluded from heading 5911, HTSUSA. This ruling letter is set forth in "Attachment A."

At issue in this proposed partial revocation is whether shielded fabrics used in electrical or mechanical machinery or apparatus *(i.e.,* EMI glare shields, bonding for straps, cables and connectors and conductive gaskets) are deemed fabrics "for technical use" so as to warrant classification in heading 5911, HTSUSA. This office has previously determined that similar fabrics, used in the manufacture of EMI and glare shields for video display terminals, were deemed "for technical use." *See* HRL 952421, dated May 14, 1993. *See also* HRL 956956, dated September 28, 1994, in which this office classified similar fabrics used in the manufacture of shielding gaskets as technical fabrics of heading 5911, HTSUSA. HRL's 932421 and 956956 are set forth in "Attachments B and C" respectively.

In HRL 086337, it was stated that the three different styles of shielded fabric at issue were to be used, *inter alia,* for bonding straps, cables and connectors and for use in conductive gaskets, protective clothing for various industries, wall coverings, furniture upholstery, and shielded environments *(i.e.,* tents and window draperies). To the extent that these fabrics can be shown to be for use in electrical or mechanical machinery or apparatus, they are deemed to be "for technical use" and may be eligible for classification within heading 5911,

HTSUSA, so long as the prerequisites of Note 7(a) to Chapter 59 have been satisfied. If shielded fabrics are intended for non-technical uses, such as, *inter alia,* for use in the manufacture of protective clothing, wall coverings, upholstery, tents and window draperies, classification is precluded from heading 5911, HTSUSA.

The shielded fabric at issue in HRL 086337 that is used in the manufacture of shielding gaskets, panels, and for use in bonding straps, cables and connectors, and is incorporated into electrical or mechanical machinery or apparatus, is classifiable as technical fabric under subheading 5911.10.2000, HTSUSA, which provides for "[T]extile products and articles, for technical uses, specified in note 7 to this chapter: textile fabrics, felt and felt-lined woven fabrics, coated covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes: other * * *," dutiable at a rate of 7.5 percent *ad valorem.*

Customs intends to partially revoke HRL 086337 to reflect proper classification of the shielded fabric that is for technical use in subheading 5911.10.2000, HTSUSA. The classification of the shielded fabric for non-technical use *(i.e.,* for use in the manufacture of protective clothing, wall coverings, upholstery, tents and window draperies) will remain under the provision for woven fabrics of synthetic filament yarn in heading 5407, HTSUSA. Before taking this action, consideration will be given to any written comments timely received. Proposed HRL 957059, which serves to partially revoke HRL 086339, is set forth in "Attachment D" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: November 29, 1994.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 19, 1990.

CLA–2 CO:R:C:G 086337 JS
Category: Classification
Tariff No.: 5407.60.2025

MS. LEANNA LOPEZ
KIU KINTETSU INTERMODAL (U.S.A.) INC.
711 Glasgow Avenue
Inglewood, CA 90301

Re: Shielded Fabrics.

DEAR MS. LOPEZ:

This is in reference to your letter of December 7, 1989, on behalf of Zipper Tubing Co., requesting classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of various EMI/ESD shielded fabrics produced in Japan.

Facts:

Three samples and relevant literature were submitted for our inspection. Sample A is woven from filament polyester man-made fibers which are then subjected to an electroless plating process which coats the fabric with copper. It is constructed of a tight 50 denier weave with a $96\pm3 \times 84\pm3$ count, and has a finished weight of 76 gr./sq. m. with a metal content of 30% by weight.

Sample B is also woven from filament polyester man-made fibers. These fibers are then subject to an electroless plating process which coats the fabric with copper and nickel. This fabric has a similar construction (i.e. with respect to weave, weight and metal content) as sample A above.

Sample C is made of Sheer Shield (TM) fabric, a woven mesh of uniform and extremely fine polyester monofilaments. This fabric is plated with copper and then coated with black acrylic resin (plastic) to reduce glare. The sample provided is uncoated.

These materials will be used, *inter alia,* for bonding straps, cables and connectors, conductive gaskets, protective clothing for various industries, wallcoverings and furniture upholstery, and shielded environments (i.e. tents and window drapery).

Issue:

Whether shielded fabrics which have been metallized are considered coated fabrics for classification purposes, and, whether they are fabrics intended for technical purposes under the HTSUSA?

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI I provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Heading 5907, HTSUSA, provides for classification of textile fabrics otherwise impregnated, coated, or covered.

Note 5 to Chapter 59, HTSUSA, provides, in pertinent part:

> Heading 5907 does not apply to:
>
> (a) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of color; * * *

The wording of Note 5(a) ("cannot be seen with the naked "eye") is a clear expression by the drafters of the Harmonized System that a significant, if not substantial, amount of material must be added to a fabric for it to be considered "impregnated, coated, or covered." The material added to the fabric must be visibly distinguishable from that fabric without the use of magnification. Any change in the "feel" of the material is not taken into account. In essence, the coating must alter the visual characteristic of the fabric in order for the fabric to be considered impregnated, coated or covered.

Applying the statutory test to the submitted samples, using normally corrected vision in a well lit room, the instant merchandise does not have an impregnation visible to the naked

eye. After the metallizing process, the visual character of the fabric is still that of a textile; the shine is merely a change in color. Therefore, the fabric is not classifiable in heading 5907, HTSUSA.

Heading 5911, HTSUSA, provides for textile products and articles, for technical uses, specified in note 7 to this Chapter. Note 7, in relevant part, includes:

> (a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape * * *, the following only:
>
> (iv) Flat woven textile fabric with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes;
>
> (v) Textile fabrics reinforced with metal, of a kind used for technical purposes.
>
> (b) Textile articles * * * of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in paper-making or similar machines * * * gaskets, washers, polishing discs and other machinery parts).

The Explanatory Notes ("EN"), which constitute the official interpretation of the tariff at the international level, state that the textile products and articles of this heading present particular characteristics which identify them as being for use in various types of machinery, apparatus, equipment or instruments or as tools or parts of tools.

It is not clear from the literature provided, and your statements regarding the make up and intended use of these fabrics, that they are manufactured for technical uses. The numerous and various applications outlined above render this fabric, despite some of its special characteristics, as nontechnical for many uses. For instance, the use of this material as wall covering would not comport with the terms and meaning of both heading 5911 and the accompanying notes. Therefore, heading 5911, HTSUSA, does not apply.

Holding:

As a result of the foregoing, the shielded fabric at issue is classified under subheading 5407.60.2025, HTSUSA, textile, category 619, as woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404, other woven fabrics, containing 85 percent or more by weight of non-textured polyester filaments, other, dyed, weighing not more than 170 g/m2, flat fabrics. The applicable rate of duty is 17 percent *ad valorem*. The textile category is 619.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at your local Customs Office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to Importing the merchandise to determine the current applicability of any import restraints or requirements.

JERRY LADERBERG,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 14, 1993.

CLA-2 CO:R:C:T 952421 CAB
Category: Classification
Tariff No. 5911.10.2000

F. GORDON LEE, ESQ.
O'CONNOR & HANNAN
1919 Pennsylvania Ave., N.W.
Suite 800
Washington, DC 20006-3483

Re: Classification of textile fabric; electroplated with metallic copper; acrylic plastic surface; Heading 5911; Note 7 to Chapter 59; Computer display terminal; Video display screen.

DEAR MR. LEE:

This ruling is in response to your inquiry of August 5, 1992, on behalf of NoRad Corporation, requesting a tariff classification for material attached to a video display frame, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The fabric is imported from Japan.

Facts:

A sample of fine woven mesh textile fabric which will be imported in bolts was submitted. The fabric is woven from polyester monofilaments, then electroplated with metallic copper, and finally acrylic plastic is added to the surface of the fabric. You maintain that the fabric is specifically designed to block radiation, eliminate static electricity, glare, and reflection.

You also submitted a sample of the finished product which is comprised of the woven mesh textile fabric at issue. The finished product is a video display screen which you refer to as the "NoRad Shield".

Issue:

Whether the merchandise at issue is classifiable under Heading 5911, HTSUSA, as textile products and articles, for technical uses?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's, taken in order.

Heading 5911, HTSUSA, provides for textile products and articles, for technical uses, specified in Note 7 to this chapter.

Note 7 to Chapter 59 states, in pertinent part:

> (a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:
>
> (i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes;
>
> * * * * * * *
>
> (v) Textile fabric reinforced with metal, of a kind used for technical purposes.

In your submission, you assert that the instant fabric is potentially classifiable under Heading 5911, HTSUSA, pursuant to Note 7(a)(v) to Chapter 59. Note 7(a)(v) to Chapter 59 expressly provides for textile fabrics that are reinforced with metal, of a kind used for technical purposes. Although the fabric in question is electroplated with metallic copper, the metal is not present to strengthen or support the fabric. There is no mention in your submission that the copper component of the subject fabric is intended for reinforcement purposes. In fact you specifically describe the fabric in question as "specially manufactured technical fabric designed specifically for the purposes of blocking radiation, eliminating

static electricity, and eliminating glare and reflection. You further state that "NoRad is unaware of uses for the fabric other than as described above". Consequently, the merchandise in question is not classifiable under Heading 5911, HTSUSA, in accordance with Note 7(a)(v) to Chapter 59.

As an alternative to classification under Heading 5911, HTSUSA, based on Note 7(a)(v), you propose classification of the instant merchandise under Heading 5911, HTSUSA, in compliance with Note 7(a)(1) to Chapter 59. As stated above, Note 7(a)(1) to Chapter 59 specifically provides for textile fabrics, felt and felt-lined woven fabrics coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes. The instant fabric is constructed of woven textile material and is coated with an acrylic plastic. However, to be properly classifiable under Heading 5911, HTSUSA, pursuant to Note 7(a)(1) to Chapter 59, the subject fabric must also fit into a class or kind of merchandise used for technical purposes.

To support your contention that the instant fabric is classifiable under Heading 5911, HTSUSA, as a technical use fabric you cite HRL 083200, dated September 19, 1989, and HRL 085425, dated December 13, 1989. In both of these rulings Customs was faced with the issue of the proper tariff classification for a computer terminal screen. The screens' primary function was to shield the computer user from the potentially harmful effects of glare, static electricity, and electromagnetic transmissions emitted from the computer terminal. Customs concluded that the screens were classifiable under subheading 5911.90, HTSUSA, as articles used for technical purposes.

The subject articles in both of the aforementioned rulings were comprised of an outer frame and woven material similar in composition to the fabric in question. You refer to this similarity in composition as a basis for your claim that the instant fabric fits into class or kind of merchandise intended for technical use. It is important to note that a finished product may be classifiable as an article for technical use under Heading 5911, HTSUSA; however, if Customs had to classify only the material component of the finished article, there is no provision in the nomenclature that requires the fabric portion to be classified under the same provision as the finished product. In this case, in light of information from the importer and the submitted finished product, it is Customs belief that the sample fabric fits into a class or kind of merchandise that will be used for technical purposes. Therefore, the instant merchandise is classifiable under Heading 5911, HTSUSA, based on Note 7(a)(1) to Chapter 59.

Holding:

Based on the foregoing, the instant fabric is classifiable under subheading 5911.10.2000, HTSUSA, which provides for textile fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes. The applicable rate of duty is 7.5 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 23, 1994.

CLA–2 CO:R:C:T 956956 SK
Category: Classification
Tariff No. 5911.10.2000

WILLIAM J. MALONEY
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

Re: Classification of cladding fabric; metalized textile fabric for making electromagnetic interference (EMI) shielding gaskets; classification in heading 5911, HTSUSA, mandates that the fabric be for "technical use"; the fabric must also be one of the fabrics enumerated in Note 7(a)(i)–(vi) to Chapter 59; Note 7(a)(i) does not require that coating be visible to the naked eye; HRL 952421 (5/14/93).

DEAR MR. MALONEY:

This is in response to your letter of October 25, 1993, on behalf of Schlegel Corporation, requesting a binding classification ruling for cladding fabric. Representative samples were submitted to Customs for examination.

Facts:

The subject merchandise consists of textile fabrics (cladding fabric) that have been plated with metal, either silver or a silver/copper combination. The plated fabrics are used to make gasket material by covering or encapsulating urethane foam that has been continuously molded into various cross-sectional shapes. These conductive shielding gaskets are used to prevent leakage of electromagnetic waves from electrical machinery and apparatus.

Four sets of sample swatches were submitted to this office and labeled Exhibits A, B, C and D. "A" is a woven ripstop nylon plated with silver. "B" and "C" are both of nonwoven nylon plated with silver. "D" is a nonwoven nylon plated with silver and subsequently plated with copper. All materials will be imported in the piece. These materials have been electrolytically plated with metal. The metal was deposited through chemical means. These samples were submitted to the New York Customs laboratory for analysis. The lab report confirmed that the samples were only plated with metal, and no plastic matrix or additional coating substances were involved.

Law and Analysis:

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification will be determined by the terms of the headings, and any relative section or chapter notes.

Chapter 5911, HTSUSA, provides for textile products and articles for technical uses so long as they are specified in Note 7 to Chapter 59. Note 7 to Chapter 59 reads:

> "Heading 5911 applies to the following goods, which do not fall in any other heading of Section XI:
>
> (a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:
>
> (i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for other technical purposes;
>
> (ji) Bolting cloth;
>
> (iii) Straining cloth of a kind used in oil presses *or the like,* of textile material or human hair;
>
> (iv) Flat woven textile fabric with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or other technical purposes;
>
> (v) Textile fabric reinforced with metal, of a kind used for technical purposes;
>
> (vi) Cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating materials.
>
> (b) Textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking

devices), of a kind used in paper-making or similar machines (for example, for pulp or asbestos-cement), gaskets, polishing discs and other machinery parts).

In order for a fabric to be classified in heading 5911, HTSUSA, two prerequisites need be met: 1) the fabric must be for technical use; and 2) the fabric must be one of the fabrics enumerated in Note 7(a)(i) through (vi). In the instant case, the subject fabrics satisfy both requirements. The fabrics are used in the manufacture of EMI shielding gaskets and panels which are incorporated into electrical machinery and apparatus so as to prevent electromagnetic radiation from escaping into the environment. This office has previously determined that similar fabric, also used in the manufacture of EMI and glare shields for video display terminals, is deemed "for technical use." *See* Headquarters Ruling Letter (HRL) 952421, dated May 14, 1993. Secondly, the subject fabrics are described by Note 7(a)(i) to Chapter 59 which requires that the textile fabric be "coated, covered or laminated with rubber, leather **or other material"** [emphasis added]. The subject fabric consists of woven and nonwoven nylon covered with silver or silver and copper. Based on the foregoing, the subject fabrics are classifiable under subheading 5911.10.2000, HTSUSA, which provides for, *inter alia,* other textile fabrics for technical use, covered with metal plating.

While Note 7(a)(i) to Chapter 59 requires that fabric classifiable in heading 5911 be "coated, covered or laminated" with rubber, leather or other materials, there is no requirement that such coating be visible to the naked eye. The visibility requirement is explicitly set forth in Note 2(a)(l) and Note 5(a) to Chapter 59, which states that heading 5903 and 5907 provide for textile fabrics in which coating can be "seen with the naked eye." This language is absent from Note 7(a)(i). The visibility language is similarly omitted from the Explanatory Notes to heading 5911. It is this office's opinion, based on an analysis of the Legal Notes to Chapter 59 taken in their entirety, that the visibility requirement was intentionally omitted from the language of Note 7(a)(i) and no such requirement shall be imputed.

Holding:

The subject textile fabrics (cladding fabric), plated with either silver or a silver/copper combination, are classifiable under subheading 5911.10.2000, HTSUSA which provides for "[T]extile products and articles, for technical uses, specified in note 7 to this chapter: textile fabrics, felt and felt-lined woven fabrics, coated covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes: other * * *," dutiable at a rate of 7.5 percent *ad valorem.*

Due to the nature of the statistical annotation (the ninth and tenth digits of the classification), your client should contact the local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC
CLA–2 CO:R:C:T 957059 SK
Category: Classification
Tariff No. 5911.10.2000

KIU KINTETSU INTERMODAL (U.S.A.) INC.
711 Glasgow Avenue
Inglewood, CA 90301

Re: Partial revocation of HRL 086337 (4/19/90); classification of shielded fabric; classification in heading 5911, HTSUSA, mandates that the fabric be for "technical use"; the fabric must also be one of the fabrics enumerated in Note 7(a)(i)–(vi) to Chapter 59; HRL 956956 (9/23/94); HRL 952421(5/14193); shielded fabric used in wall coverings, drapery, upholstery and clothing is *not* for technical use.

DEAR MS. LOPEZ:

On April 19, 1990, Customs issued you Headquarters Ruling Letter (HRL) 086337 in which this office classified various shielded fabrics under subheading 5407.60.2025 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, *inter alia*, woven fabrics of synthetic filament yarn. In that ruling Customs determined that as the subject fabric was not for technical use, classification was precluded from heading 5911, HTSUSA. Upon review, that determination is deemed to be partially in error. Our analysis follows.

Facts:

Three samples are at issue. Sample A is woven from filament polyester man-made fibers which are then subjected to an electroless plating process which coats the fabric with copper. The fabric is constructed of a tight 50 denier weave with a $96 \pm 3 \times 84 \pm 3$ count, and has a finished weight of 76 grams per square meter with a metal content of 30 percent by weight.

Sample B is also woven from filament polyester man-made fibers. These fibers are then subject to an electroless plating process which coats the fabric with copper and nickel. This fabric has a similar construction to Sample A.

Sample C is made of Sheer Shield (TM) fabric, a woven mesh of uniform and extremely fine polyester monofilaments. This fabric is plated with copper and then coated with black acrylic resin (plastic) to reduce glare.

These materials will be used, *inter alia*, for bonding straps, cables and connectors, for use in conductive gaskets, protective clothing for various industries and shielded environments (*i.e.*, tents and draperies) and for wall coverings and upholstery.

Issue:

Whether the subject metallized shielded fabrics are classifiable as technical fabrics of heading 5911, HTSUSA?

Law and Analysis:

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification will be determined by the terms of the headings, and any relative section or chapter notes.

Chapter 5911, HTSUSA, provides for textile products and articles for technical uses so long as they are specified in Note 7 to Chapter 59. Note 7 to Chapter 59 reads:

> "Heading 5911 applies to the following goods, which do not fall in any other heading of Section XI:
>
> (a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:
>
> (i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for other technical purposes;
>
> (ii) Bolting cloth;
>
> (iii) Straining cloth of a kind used in oil presses or the like, of textile material or human hair;
>
> (iv) Flat woven textile fabric with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or other technical purposes;

(v) Textile fabric reinforced with metal, of a kind used for technical purposes;
(vi) Cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating materials.

(b) Textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices), of a kind used in paper-making or similar machines (for example, for pulp or asbestos-cement), gaskets, polishing discs and other machinery parts)."

In order for a fabric to be classifiable in heading 5911, HTSUSA, two prerequisites need be met: 1) the fabric must be one of the fabrics enumerated in Note 7(a) (i) through (vi); and 2) the fabric must be for technical use.

In the instant case, all of the fabrics consist of woven and nonwoven nylon covered with copper, copper and nickel, or copper and acrylic resin. As such, the subject fabrics are enumerated in Note 7(a)(i) to Chapter 59 in that they have been "coated, covered or laminated with rubber, leather **or other material"** [emphasis added].

It is this office's opinion that *some* of the shielded fabrics at issue in HRL 086337 satisfy the second prerequisite for classification in heading 5911, HTSUSA, which requires that the fabric be for technical use. To the extent that the subject fabrics are used in electrical or mechanical machinery or apparatus (for use in gaskets, panels, glare shields and for use in bonding straps, cables and connectors), they are deemed to be for technical use. This office has previously determined that similar fabric, used in the manufacture of EMI and glare shields for video display terminals, was deemed "for technical use." *See* HRL 952421, dated May 14, 1993. *See also* HRL 956956, dated September 28, 1994, in which this office classified similar fabric used in the manufacture of shielding gaskets as technical fabric of heading 5911, HTSUSA. We note that the subject fabric which is used as wall coverings, upholstery, window draperies, tents or protective clothing is *not* deemed for technical use and classification will be precluded from heading 5911, HTSUSA.

The shielded fabric in HRL 086337 which is used in electrical or mechanical machinery or apparatus (for use in gaskets, panels, glare shields and for use in bonding straps, cables and connectors), is classifiable under subheading 5911.10.2000, HTSUSA, which provides for, *inter alia,* coated textile fabrics for technical use.

The shielded fabric in HRL 086337 which is used for wall coverings, upholstery, window draperies, tents or protective clothing is *not* deemed for technical use and classification is proper under subheading 5407.60.9925, HTSUSA, (the successor to subheading 5407.60.2025 under the current HTSUSA).

Holding:

HRL 086337 is partially revoked.

The subject textile fabrics (metallized shielded fabrics) plated with either copper, a copper/nickel combination, or copper and acrylic resin, that are used in electrical or mechanical machinery or apparatus (for use in gaskets, panels, glare shields and for use in bonding straps, cables and connectors), are classifiable under subheading 5911.10.2000, HTSUSA which provides for, "[T]extile products and articles, for technical uses, specified in note 7 to this chapter: textile fabrics, felt and fell-lined woven fabrics, coated covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes: other * * *," dutiable at a rate of 7.5 percent *ad valorem.*

The shielded fabric used for wall coverings, upholstery, window draperies, tents or protective clothing in HRL 086337 is not deemed for technical use and classification remains under subheading 5407.60.9925, HTSUSA, (the successor to subheading 5407.60.2025 under the current HTSUSA) which provides for, "[W]oven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: other woven fabrics, containing 85 percent or more by weight of non-textured polyester filaments: other: other * * * dyed: weighing not more than 170 grams per square meter: flat fabrics." The applicable rate of duty is 17 percent *ad valorem* and the textile category is 619.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177. 10(c)(1), Customs Regulations (19 CFR 177. 10(c)(1)).

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF CUSTOMS RULING LETTER CONCERNING THE TARIFF CLASSIFICATION OF CERTAIN MEN'S UPPER BODY GARMENTS

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling pertaining to the tariff classification of certain men's upper body garments. Notice of the proposed modification was published October 19, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 42.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Cathy Braxton, Textile Classification Branch (202) 482–7050.

SUPPLEMENTARY INFORMATION

BACKGROUND

On October 19, 1994, Customs published a notice in the CUSTOMS BULLETIN Volume 28, Number 42, proposing to modify Customs Ruling Letter 877301 issued August 19, 1992, by the District Director of San Diego, California, wherein Customs held that certain men's upper body garments were classifiable as men's jackets in subheading 6201.92.2050, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). No comments have been received in response to the subject merchandise.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying DD 877301 to reflect the proper tariff classification under subheading 6205.20.2065, HTSUSA, which provides for men s other cotton shirts. Headquarters Ruling Letter 956243 revoking DD 877301, is set forth in the Attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: November 29, 1994.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 29, 1994.

CLA-2 CO:RC:T 956243 CAB
Category: Classification
Tariff No. 6205.20.2065

MR. GUGUN CHADHA
TOTAL RESULTS, INC.
2301 Industrial Parkway Ruling West,
Unit 8
Hayward, CA 94545

Re: Modification of DD 877301, dated August 19, 1992; Classification of men's upper body garment; shirt v. jacket; Heading 6201; Heading 6205; *Textile Guidelines*, CIE 13/88.

DEAR MR. CHADHA:

This ruling is in response to a request for modification of District Ruling (DD) 877301 of August 19, 1992, from the Area Director of Customs New York. Since the issuance of that ruling, Customs has reexamined the merchandise and determined that it was incorrectly classified and therefore, should be modified. Accordingly, this ruling modifies DD 877301. A sample was submitted for examination.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of DD 877301 was published October 19, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 42.

Facts:

The submitted sample is a men's cotton flannel hip-length upper body garment. The garment contains long sleeves with vents, button cuffs, a shirt collar, a breast patch pocket with a button means of closure, a full frontal opening with a placket and button closure, a shirt collar, a single seamless back panel, a triangular back notch at the bottom of the garment, side vents at the bottom of the garment, side-seam pockets at the waist, and a quilted nylon lining.

In DD 877301, the subject merchandise was classified by the District Director of Customs San Diego, California, in subheading 6201.92.2050 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for men's anoraks, windbreakers and similar articles, of cotton. Since the issuance of DD 877301, the Area Director of New York has reviewed the classification and determined that it was in error. The New York Seaport believes that the garments described therein are properly classifiable as men's cotton shirts in subheading 6205.20.2065, HTSUSA.

Issue:

Whether the garments were properly classified as jackets of Heading 6201, HTSUSA, or whether they are classifiable as shirts of Heading 6205, HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

The garments at issue are considered to be hybrid garments since they possess characteristics found on both shirts and jackets. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN), the official interpretation of the tariff at the international level are usually consulted for tariff classification purposes. However, in this instance, since the subject garments are hybrids, the EN offer no guidance in classifying the subject garments.

The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories. CIE 13/88, [hereinafter, *Textile Guidelines*] which are sometimes consulted for aid in classifying certain garments provides a list of features common in jackets. If a gar-

ment possesses at least three of the listed features and if the result is not unreasonable, then the garment is generally classifiable as a jacket.

In this case, the submitted sample has the general appearance of a flannel shirt. The quilted lining and the pockets below the waist are characteristics generally associated with jackets and not shirts. The garment also contains side vents and a triangular vent at the bottom center. The *Textile Guidelines* state that a full or partial lining, pockets at or below the waist, side vents in combination with back seams, or back vents or pleats, would be features that would point to classification as a jacket. While the instant garment definitely has two jacket features (pockets below the waist and the quilted lining), there is still a question as to whether the triangular notch located on the rear bottom of the garment is considered a vent for tariff classification purposes.

Upon further examination of the subject garment, it appears that it contains a single, seamless back panel. The back notch was constructed by removing a triangular piece of fabric from the garment. This differs from a traditional back vent which is generally found in the seam to provide relief on a stress point by enabling a garment to flex and expand. The notch on this garment does not serve any functional purpose, nor is it located at a seam. Thus, the subject garment only contains two features commonly associated with a jacket. Moreover, the submitted sample has the general appearance of a flannel shirt. Therefore, the garment is classifiable as a shirt.

This determination is in accordance with Headquarters Ruling Letter (HRL) 955133, dated November 17, 1993, where Customs classified a garment similar in construction to the instant article as a shirt. The sample therein was described as "a men's cotton flannel upper body garment which reaches to about the hip area in length. The garment has an outer shell of cotton flannel fabric, long sleeves with sleeve vents and buttoned cuffs, a shirt collar, a breast patch pocket with a buttoned flap, a full front opening with a placket and button closure (typical shirt buttons), a tapered shirt silhouette, side vents at the bottom of the garment, side-seam pockets at the waist, and a quilted nylon lining." Customs provided the following rationale for the tariff classification:

> Utilizing the *Textile Guidelines*, taking into consideration the advertising material on similar garments submitted by the National Import Specialist and viewing the garment itself, this office believes that classification of the garment at issue as a shirt and not a jacket was a proper determination. In light of the numerous rulings on similar garments classified as shirts, such a result is not unreasonable.

Holding:

Based on the foregoing, the subject garment is classifiable in subheading 6205.20.2065, HTSUSA, which provides for men's other cotton shirts. The applicable rate of duty is 21 percent *ad valorem* and the textile restraint category is 340.

DD 877301 dated August 19, 1992, is hereby modified. In accordance with section 625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.9(d)(1)).

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF WROUGHT IRON PEDESTALS WITH GLASS VESSELS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of wrought iron pedestals with glass vessels. Notice of the proposed modification was published on October 19, 1994, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Clarke, Metals and Machinery Classification Branch, Office of Regulations and Rulings (202) 482–7063 or 7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 19, 1994, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 42, proposing to modify New York Ruling (NY) 875420 dated July 2, 1992, in which the Area Director of Customs, New York Seaport, classified wrought iron pedestals with glass vessels under subheading 8306.29.00, Harmonized Tariff Schedule of the United States (HTSUS), as other statuettes and other ornaments, of base metal.

Customs Headquarters recently issued Ruling Letter (HRL) 956048 dated July 7, 1994, which classified another iron pedestal with glass vessel under subheading 7013.99.90, HTSUS, as other glassware, valued over $5 each. HRL 956048 determined that the iron pedestal with glass vessel was a composite good with the essential character imparted by the glass vessel. Based on HRL 956048, Customs proposed to modify NY 875420 to reflect the proper classification of the subject article under subheading 7013.99.90, HTSUS, as other glassware, valued over $5 each. Only one comment was received in response to this notice. A detailed response to the issues raised in the comment is contained in HRL 956810 which is set forth in the Attachment to this document.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(C)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter section 625), this notice advises interested parties that Customs is modifying NY 875420

to reflect the proper classification of the wrought iron pedestals with glass vessels under subheading 7013.99.90, HTSUS, as other glassware, valued over $5 each. The general column one rate of duty is 7.2 percent *ad valorem*.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: November 28, 1994.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 28, 1994.

CLA–2 CO:R:C:M 956810 KCC
Category: Classification
Tariff No. 7013.99.90

PETER J. FITCH, ESQ.
FITCH KING AND CAFFENTIZIS
116 John Street
New York, NY 10038

Re: Wrought iron pedestals with glass vessels; NY 875420 modified; 9405.50.40; EN 94.05; candle holder; HRL 953016; HRL 088742; HRL 089054; HRL 956048; class or kind; GRI 3(b); essential character; General EN Rule 3(b); composite good; glass vs. metal; EN 70.13; HRL 951789; whole character of glass articles; HRL 953384; 7323.99.90; EN 73.23; 9403; furniture; General EN (A) to Chapter 94; *Sprouse Reitz & Co.; Furniture Import Corp.;* 8306.29.00; statuettes and other ornaments, of base metal; EN 83.06.

DEAR MR. FITCH:

This is in reference to New York (NY) 875420 issued to Caballero Brokers, Inc., on July 2, 1992, by the Area Director of Customs, New York Seaport, on behalf of your client, Tucan International, which concerned the tariff classification of several articles under the Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c)(1), Tariff Act of 1930(19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182,107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of NY 875420 was published on October 19, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 42. Comments submitted in response to the proposed modification in your letter dated November 14, 1994, were taken into consideration in rendering this decision.

Facts:

In a letter of June 15,1992, Caballero Brokers, Inc., described the three different sized wrought iron pedestals with glass vessels as follows:

FLOOR STANDING VASE (DECORATIVE). THIS VASE-STAND IS CONSTRUCTED OF WROUGHT IRON AND HAS A HAND BLOWN GLASS

INSERT WITH A CONCAVE BOTTOM WHICH WILL NOT ALLOW IT TO STAND BY ITSELF EITHER ON THE FLOOR OR TABLE. THIS GLASS CONCAVE VASE WILL BE PACKAGED SEPARATELY AND SOLD AS A COMPLIMENT (SET) OF THE WROUGHT IRON STAND. THE VALUE OF THIS ITEM IS APPROXIMATELY $18.00—$13. STAND $5. GLASS. WEIGHT OF THIS ITEM IS APPROXIMATELY 28% (LARGE), 33% (MEDIUM), 42% (SMALL) GLASS AND THE REMAINDER OF IRON RESPECTIVELY.

Based on this information, in NY 875420, the Area Director of Customs, New York Seaport, classified the wrought iron pedestals with glass vessels under subheading 8306.29.00, HTSUS, which provides for "Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof * * * Statuettes and other ornaments and parts thereof * * * Other."

You state that the article which was the subject of NY 875420 was Article I–840 R, which is now described and sold as "Sm. Floor Candle w/insert". However, we note that NY 875420 described and classified three different sized wrought iron pedestals with glass vessels. A current brochure and price list were submitted with your November 14, 1994, letter depicting the three different sized articles at issue. These articles are described as "Lg. Floor Candle w/insert", "Md. Floor Candle w/insert", and "Sm. Floor Candle w/insert." The prices vary from $35.00 to $60.00, depending on size and quantity ordered.

At the time that the initial ruling request was submitted, you state that the final use of the articles had not been determined. You state that considering the merchandising and use of the articles, they cannot be fairly described as decorative vases. You contend that the articles at issue are sold and used as illuminating candle holders. Therefore, if the classification in NY 875420 is to be modified, the wrought iron pedestals with glass vessels should be classified under subheading 9405.50.40, HTSUS, as other non electrical lamps.

The headings to be considered are as follows:

7013 Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018) * * *.

7323 Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel * * *.

8306 Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof * * *.

9403 Other furniture and parts thereof * * *.

9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included * * *.

Issue:

What is the tariff classification of the wrought iron pedestals with glass vessels under the HTSUS?

Law And Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1, HTSUS, states, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes * * *."

You contend that the wrought iron pedestals with glass vessels are classifiable under subheading 9405.50.40, HTSUS, as nonelectrical lamps and lighting fittings. In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive, provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the HTSUS. *See,* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23,1989). EN 94.05 (pg. 1581), states that lamps and light fittings of this group can be composed of any material and use any source of light, including candles. In addition, EN 94.05(1)(6) states that this heading covers "* * * in particular candelabra, candlesticks, and candle brackets."

We have previously held that empty glass candle holders are classified under subheading 9405.50.40, HTSUS, as nonelectrical lamps and light fittings. *See,* HRL 953016 dated April

27, 1993, HRL 088742 dated April 22,1991, and HRL 089054 dated August 2, 1991, which classified glass candle holders as nonelectrical lamps and light fittings under subheading 9405.50.40, HTSUS, pursuant to EN 94.05.

You state that the articles are advertised and used as illuminating candle holders and, therefore, should be classified under subheading 9405.50.40, HTSUS. However, other information before this office indicates that the class of wrought iron pedestals with glass vessels is not limited to candle holders. Headquarters Ruling Letter (HRL) 956048 dated July 7,1994, classified similar articles, iron pedestals with glass vessels, under subheading 7013.99.90, HTSUS, as other glassware, valued over $5 each. HRL 956048 determined that the articles were composite goods with the essential character imparted by the glass vessels.

In HRL 956048 the importer marketed the articles as "spirit lamps and votive candle burners, as the basic design is derived from similar articles used in the late 16th and 17th century by monasteries and churches for illumination." However, the importer also stated that this article is a "household decorative accessory whose use is limited solely by the imagination of the user." We determined that classification under subheading 9405.50.40, HTSUS, was inappropriate because the metal iron pedestal with glass vessel did not belong to the class or kind of lamps and lighting fittings classifiable under subheading 9405.50.40, HTSUS. Even though it was marketed as a spirit lamp and votive candle burner with its basic design derived from similar articles used in the late 16th and 17th century by monasteries and churches for illumination, the importer stated that they could be used for any purpose that the buyer desires. Therefore, we determined that it was a decorative article which was not classifiable as a lamp or lighting fitting under subheading 9405.50.40, HTSUS.

Based on the information before Customs, we find that the wrought iron pedestals with glass vessels are still not of the class or kind of lamps and lighting fittings classifiable under subheading 9405.50.40, HTSUS. Like HRL 956048, we note that the articles at issue are marketed as "Sm., Md., and Lg. Floor Candle w/insert". Additionally, as you stated, we have no definitive information that the articles are used as decorative articles nor do we have definitive information that the articles are used as candle holders. We do have varying information which indicates that the articles are not solely candle holders, but decorative articles. The importer stated that this article is a "household decorative accessory whose use is limited solely by the imagination of the user." Therefore, we are of the opinion that the articles at issue are not of the class or kind of lamps and lighting fittings, but are decorative articles which may, in some cases hold a candle, but can also hold flowers, plants, a wine bottle, glass beads, etc.

The article in this case is composed of an wrought iron pedestal and a glass vessel. When, by application of GRI 2, HTSUS, goods are *prima facie* classifiable under two or more headings, GRI 3, HTSUS, is applicable. In this case, classification is determined by application of GRl 3(b), HTSUS, which provides:

> Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

EN Rule 3(b)(IX) (pgs. 3–5), states that:

> For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts (emphasis in original).

In this case, we are of the opinion that the wrought iron pedestal with glass vessel is not a set, but is a composite good. The components of the article, the wrought iron pedestal and glass vessel, are adapted one to the other, mutually complementary, and together form a whole which would not normally be offered for sale in separate parts. Therefore, we need to determine which component imparts the essential character.

In general, essential character has been construed to mean the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article. In addition, EN Rule 3(b) (pg. 4), provides further factors which help determine the essential character of goods. Factors such as bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods are to

be utilized, though the importance of certain factors will vary between different kinds of goods.

Based on the information submitted, we are of the opinion that the essential character of the wrought iron pedestal with glass vessel is the glass vessel. The glass vessel is the component which distinguishes the article. We note that the glass vessel cannot stand on its own; the pedestal supports the glass vessel. However, we are of the opinion that the glass is the component which fulfills the function of the article; it holds the object or objects to be displayed such as, flowers, plants, wine bottles, candles, etc. Therefore, the glass vessel imparts the essential character to the wrought iron pedestal with glass vessel. *See,* HRL 956048.

You contend that the wrought iron pedestal imparts the essential character of the article. As support, you cite HRL 951789 dated August 5,1992, which held that the essential character of a "Tiffany lamp" was the metal base and not the "Tiffany" lamp shade. HRL 951789 determined that the structure of the metal lamp base was the component which allowed the article to function as a lamp. HRL 951789 determined that:

> The metal components comprise the base and neck of the table lamps which support the lamp socket and the electrical circuitry as well as support the 'tiffany look' glass shade: Without the metal base and neck to hold the lamp sockets and electric circuitry in place, the table lamps would not be able to function as a lamp.

We believe that HRL 951789 is factually distinguishable from the instant case. Although the pedestal supports the glass, it is not comparable to the metal components in HRL 951789. The metal components in HRL 951789 actual held the lamp. The lamp could function without the "Tiffany" shade, but it could not function without the metal components. In this case, although the pedestal supports the glass vessel, it is the glass component which performs the holding function of the articles placed therein. The pedestal cannot perform the holding function of the articles on its own. Therefore, we do not find the rational in HRL 951789 compelling for the classification of the subject articles.

The glass vessel is classified under heading 7013, HTSUS, which provides for "Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018) * * *." EN 70.13 (pgs. 936–a), states that heading 7013, HTSUS, covers:

> **Glassware for indoor decoration** and other glassware (including that for churches and the like), such as vases, ornamental fruit bowls, statuettes, fancy articles (animals, flowers, foliage, fruit etc.) table centres **(other than** those of **heading 70.09),** aquaria, incense burners, etc., and souvenirs bearing views (emphasis in original).

The glass vessel is ornamental glassware similar to a vase, although as stated, it cannot stand by itself. Even though the glass vessel can be used for both indoor and outside decoration, it is of the class or kind of article classifiable under heading 7013, HTSUS. Inasmuch as the essential character is imparted by the glass vessel, the entire composite good (wrought iron pedestal with glass vessel) is, therefore, classified under the tariff classification of the glass vessel. As the value of the wrought iron pedestal with glass vessel is over $5 each, it is classified under subheading 7013.99.90, HTSUS, as other glassware, valued over $5 each. *See,* HRL 956048.

You contend that when classifying a multi-material article under heading 7013, HTSUS, the glass portion of the article must not only provide the essential character of the article, but must also give the entire article the character of glass articles. You cite to EN 70.13 which provides:

> Articles of glass combined with other materials (base metal, wood, etc.) are classified in this heading **only** if the glass gives the whole the character of glass articles (emphasis in original).

Therefore, you contend that in addition to the usual standards for determining essential character, this note adds the requirement that in the case of glass commingled with other materials, such articles will be classifiable as glass only if the glass give the entire article the character of glass.

The above-reference test from EN 70.13 deals with classification of a glass article pursuant to GRI 1, HTSUS. In this case, classification is based on GRI 3(b), HTSUS, as a composite good. When classifying a composite good pursuant to GRI 3(b), HTSUS, states that:

> * * * composite goods consisting of different materials or made up of different components * * * shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

GRI 3(b), HTSUS, states that we must determine the essential character of a composite good and then classify the entire article pursuant to the classification of the component which imparts the essential character. In effect, GRI 3(b), HTSUS, directs us to ignore the remaining components and their impact on the article. Therefore, reliance on the above-reference language in EN 70.13 is inappropriate in this case.

Additionally, you contend that if we hold that these articles are not classified as candle holders under subheading 9405.50.40, HTSUS, we should follow the rational in HRL 953384 dated September 14, 1994. HRL 953384 dealt with the classification of glasses for half-yard-of-ale and foot-of-ale stands. We determined that the glasses were considered parts of the ale stands and were, therefore, classified under subheading 7020.00.00, HTSUS, as other articles of glass. HRL 953384 determined that the glasses could not be classified under heading 7013, HTSUS, as parts of drinking glass because that tariff provision does not provide for parts. It is well established that where there is no provision for parts of articles under a tariff provision, imported merchandise held to be parts will not be subject to classification thereunder.

We do not find HRL 953384 to be dispositive in this case. The merchandise at hand is the entire wrought iron pedestal with glass vessel, not merely the glass vessel. If merely the glass vessel was imported, consideration of HRL 953384 would be necessary. We do not believe that HRL 953384 has any bearing on this case, nor do we believe that our finding in this case will have any ramifications on the holding in HRL 943384.

Additionally, since in your opinion classification under heading 7013, HTSUS, is inappropriate, you suggest classification under subheading 7323.99.90, HTSUS, as other household articles, of iron or steel. EN 73.26 (pgs. 1035–1036) states that:

> This group comprises a wide range of iron or steel articles **not more specifically covered** by other headings of the Nomenclature, used for table, kitchen or other household purposes; it includes the same goods for use in hotels restaurants, boarding-houses, hospitals, canteens, barracks, etc.
>
> These articles may be cast, or of iron or steel sheet, plate, hoop, strip, wire, wire grill, wire cloth, etc., and may be manufactured by any process (moulding, forging, punching, stamping, etc.). They may be fitted with lids, handles or other parts or accessories of other materials **provided** that they retain the character of iron or steel articles (emphasis in original).

The classification of the wrought iron pedestals with glass vessels could be possible under this provision pursuant to GRI 1, HTSUS. EN 73.23 states that the iron or steel article may contain other parts, if the other parts do not cause the whole article to lose its character of iron or steel. We are of the opinion that the wrought iron pedestals with glass vessels do not retain the character of iron or steel because they contain a glass component. The addition of the glass component causes the article to lose its character of iron or steel. Therefore, the wrought iron pedestals with glass vessels are not classifiable under subheading 7323.99.90, HTSUS, pursuant to GRI 1, HTSUS.

Consideration was also given as to whether the wrought iron pedestal with glass vessel may be classifiable under heading 9403, HTSUS, which provides for "Other furniture and parts thereof * * *." General EN (A) to Chapter 94 (pg. 1574), defines furniture as:

> Any "movable" articles (**not** included under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices * * *. Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category (emphasis in original).

The wrought iron pedestal with glass vessel is a movable article which is constructed for placing on the floor or ground. However, we are of the opinion that the article is not mainly used for a utilitarian purpose. In determining whether certain articles are classifiable as furniture, there is a clear distinction between an article of utility and those used primarily for ornamentation. *See, Sprouse Reitz & Co., v. United States*, 67 Cust. Ct. 209, C.D.

4276(1971), and *Furniture Import Corp., v. United States*, 56 Cust. Ct. 125, C.D. 2619 (1966).

The wrought iron pedestal with glass vessel is a subsidiary article designed for ornamentation. It is not an article designed for a utilitarian purpose. Moreover, this article has been described as "DECORATIVE" and we are of the opinion that it is a decorative article. Therefore, the wrought iron pedestal with glass vessel is not classified as furniture under heading 9403, HTSUS.

NY 875420 classified the wrought iron pedestal with glass vessel under subheading 8306.29.00, HTSUS, as other statuettes and other ornaments, of base metal. EN 83.06 (pg. 1122), states that statuettes and other ornaments:

> * * * comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind **designed essentially for decoration,** e.g., in homes, offices, assembly rooms, churches, gardens (emphasis in original).

The wrought iron pedestal has a glass vessel, which, as stated previously, in our opinion is not a subsidiary non-metallic part. Therefore, the wrought iron pedestal with glass vessel is not classifiable under subheading 8306.29.00, HTSUS, pursuant to GRI 1, HTSUS.

Holding:

The wrought iron pedestals with glass vessels are composite goods with the essential character imparted by the glass vessels.

Therefore, they are classified under subheading 7013.99.90, HTSUS, as other glassware, valued over $5 each.

NY 875420 is modified as directed above. In accordance with section 625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION OF RULING LETTER RELATING TO CLASSIFICATION OF WIND SHIRT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a garment known as a wind shirt. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before January 13, 1995.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, NW., Franklin Court, Washington, DC 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Textile Classification Branch, (202–482–7050)

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a garment known as a wind shirt and classified as a women's other garment of heading 6211 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

In HRL 956222 of April 21, 1994, Customs classified the garment at issue as a women's other garment of heading 6211, HTSUSA. The classification was based upon the submitted garment sample. No other information regarding the garment, such as its intended use in the United States, was supplied.

Since issuance of HRL 956222, Customs has received requests for classification rulings on similar garments. In HRL 956982, Customs classified a very similar garment as a jacket, similar to a windbreaker, in heading 6202, HTSUSA. Information regarding the use of the garment and the manner in which it was advertised was submitted to Customs. As we believe that the garments classified in HRL 956222 and HRL 956982 are used in the same manner and for the same purposes in the United States, we believe they should be similarly classified. In order to ensure uniformity and eliminate uncertainty, Customs is proposing to modify HRL 956222 which is set forth in "Attachment A". The proposed modification letter, HRL 957344, is set forth in "Attachment B".

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be en entertained for actions occurring on or after the date of publication of this notice.

Dated: November 28, 1994.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, April 21, 1994.

CLA–2 CO:R:C:T 956222 CMR
Category: Classification
Tariff No. 6211.43.0060

MR. PATRICK SHERIDAN
SENIOR CUSTOMS REPRESENTATIVE
11/Fl., St John's Building
33 Garden Road, Central
Hong Kong

Re: Classification of woven pullover; wind shirt.

DEAR MR. SHERIDAN:

This is in response to the March 29, 1994, request by Rena Gabriel for the classification of a woven pullover referred to as a wind shirt. This office received the request, with sample, on April 11, 1994.

Facts:

The submitted sample is a woven pullover upper body garment. The garment is made with 100 percent nylon woven fabric with a 600 mm coating (which we assume is a plastics). The garment features long sleeves, a round neckline with rib knit trim, rib knit cuffs, and a rib knit bottom. The rib knit fabric is made of 65 percent polyester/35 percent cotton or 100 percent cotton fabric. The garment will be made in the People's Republic of China, Sri Lanka or Bangladesh.

Issue:

What is the classification of the submitted wind shirt?

Is it classifiable as a water resistant garment pursuant to Additional U.S. Note 2, Chapter 62?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order]."

As the subject garment is of woven fabric, exclusive of trim, it is classifiable in Chapter 62 of the HTSUSA. The garment is known as a wind shirt and has the appearance of a pullover shirt. Before addressing the appropriate heading in which the garment is classified, we must first decide if it is classifiable as a men's or women's garment.

Legal Note 8, Chapter 62, provides that garments with closures are classified as men's or women's based on the direction of the closure unless the cut of the garment clearly indicates it is designed for one or the other of the sexes. This garment has no closure. Based upon the cut of the garment, without any information regarding sizing, we cannot determine whether the garment is for a man or a woman. Legal Note 8, Chapter 62, states that when a garment cannot be identified as either men's or boys' or as women's or girls', it is to be classified in the headings covering women's or girls' garments. We will therefore treat this garment as a women's garment for classification purposes.

Heading 6206, HTSUSA, provides for women's or girls' blouses, shirts and shirt-blouses. The Explanatory Notes to the Harmonized Commodity Description and Coding System, the official interpretation of the tariff at the international level, limit the scope of heading 6206 by stating that the heading does not cover certain garments, among them garments with a ribbed waistband. As the submitted sample has a ribbed waistband, it is not classifiable in heading 6202, HTSUSA.

The garment is made of fabric which has a 600 mm coating applied to it. Therefore, the possibility of classification in heading 6210, HTSUSA, must be considered. Heading 6210, HTSUSA, provides for "garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907." Assuming the coating is a plastic material, the fabric may be of heading 5903 if it meets the requirements for classification therein.

Legal Note 2, Chapter 59, provides, in relevant part:

Heading 5903 applies to:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:

(1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of color.

We have examined the nylon fabric of the submitted garment and cannot see any coating. As the coating must be visible to the naked eye for classification in heading 5903 and the garment before us has no visible coating, the garment is not classifiable within heading 6210, HTSUSA.

Heading 6211, HTSUSA, provides for, among other things, other garments. This is the heading in which the garment at issue is classifiable. Specifically, the garment is a women's woven man-made fiber other garment classified in subheading 6211.43.0060, HTSUSA, which provides for blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206.

Regarding the question of classification as a water resistant garment pursuant to Addition U.S. Note 2, Chapter 62, the note is limited in application to specific subheadings. The subheading in which the sample garment is classified is not one of the subheadings for which the note applies, therefore, the garment may not be classified as a water resistant garment for tariff purposes even if it does meet the requirements of the note.

Holding:

The submitted sample, a wind shirt, is classifiable in subheading 6211.43.0060, HTSUSA, textile category 641, dutiable at 17 percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest the importer check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available **for inspection** at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, the importer should contact the local Customs office prior to importation of this merchandise to determine the current status of any import restraints, or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC

CLA–2 CO:R:C:T 957344 CMR
Category: Classification
Tariff No. 6202.93.4500 and 6202.93.5011

MR. PATRICK SHERIDAN
SENIOR CUSTOMS REPRESENTATIVE
11/Fl., St. John's Building
33 Garden Road, Central
Hong Kong

Re: Modification of HRL 956222; classification of a wind shirt; classifiable as a jacket, similar to a windbreaker.

DEAR MR. SHERIDAN:

On April 21, 1994, this office issued a ruling to you in regard to a request by Rena Gabriel for the classification of a woven pullover referred to as a wind shirt. Other than the sample,

we had no information regarding the garment use in the United States. Since the time we issued Headquarters Ruling Letter (HRL) 956222, Customs has received more information regarding the use of garments such as the one ruled on in HRL 956222. Based upon that additional information, we are modifying HRL 956222 to reflect proper classification of the garment at issue therein as a jacket, similar to a windbreaker, in heading 6202, HTSUSA.

Facts:

The sample in HRL 956222 was described as:

> a woven pullover upper body garment. The garment is made with 100 percent nylon woven fabric with a 600 mm coating (which we assume is a plastics). The garment features long sleeves, a round neckline with rib knit trim, rib knit cuffs, and a rib knit bottom. The rib knit fabric is made of 65 percent polyester/35 percent cotton or 100 percent cotton fabric. The garment will be made in the People's Republic of China, Sri Lanka or Bangladesh.

Issue:

Was the garment classified in HRL 956222 properly classified as a women's other garment (blouse excluded from heading 6206) of heading 6211, HTSUSA, or is it more properly classified as a women's jacket, similar to a windbreaker in heading 6202, HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order]."

In HRL 956982, Customs recently classified a garment very similar to the garment classified in HRL 956222. The garment in HRL 956982 was described as a windjacket and its use in the United States was described as for wear on golf courses during inclement weather. In addition, catalogue advertising was submitted showing the garment described as a windjacket.

As the garment in HRL 956222 is so similar to that in HRL 956982, with the exception being that intended use was not described in HRL 956222, Customs believes the garments should be classified in the same manner. Therefore, Customs is modifying HRL 956222 to reflect proper classification of the garment therein to be as a women's woven man-made fiber jacket, similar to a windbreaker in heading 6202, HTSUSA.

Holding:

The wind shirt of HRL 956222 is properly classified as a women's woven man-made fiber jacket, similar to a windbreaker, in subheading 6202.93.4500, HTSUSA, if it meets the water resistance test of U.S. Note 2, Chapter 62. Garments classified therein are dutiable at 7.6 percent *ad valorem*. If the garment does not meet the water resistance test, it is classified in subheading 6202.93.5011, HTSUSA, and is dutiable at 29.5 percent *ad valorem*. The garment falls in textile category 635.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available **for inspection** at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF A HUNTING GLOVE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a hunting glove. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before January 13, 1995.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., N.W., Suite 4000, Washington DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Karateew, Textile Classification Branch, (202) 482–7050.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L, 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a hunting glove.

In Headquarters Ruling Letter (HRL) 952420, dated April 9, 1993, a cold weather camouflaged glove was classified under subheading 6216.00.3225, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, other, with fourchettes, containing 50 percent or more by weight of cotton, man-made fibers or any combination thereof. This ruling letter is set forth in "Attachment A."

At issue in this proposed modification is whether the glove the subject of HRL 952420 has been specially designed for use in hunting so as to warrant classification under subheading 6216.00.4600, HTSUSA, which provides for gloves specially designed for use in sports. In HRL

089769, dated October 8, 1991, Customs recognized several design characteristics as indicative of "some intent to design * * * gloves as hunting gloves." The cited features included non-skid palm grips which also include the two shooting fingers, a camouflage outershell or an outersheil with enhanced visibility, insulation that adds warmth without creating excess bulk, and a hook and clasp closure. HRL 089769 is set forth in "Attachment B."

The gloves at issue in HRL 952420 possess these features, thereby creating a presumption that they were specially designed as hunting gloves. The subject gloves also possess additional features indicative of such design such as a tapered index finger for easier fmger tip access to the trigger and "action back" pleats which allow for greater hand flexibility. The presumption that the subject glove has been specially designed as a hunting glove is further bolstered by extrinsic marketing evidence provided by the importer.

Based on the foregoing evidence, it is Customs' opinion that the glove the subject of HRL 952420 has been specially designed for use in hunting and therefore warrants classification under subheading 6216.00.4600, HTSUSA.

Customs intends to modify HRL 952420 to reflect proper classification of the glove in subheading 6216.00.4600, HTSUSA. Before taking this action, consideration will be given to any written comments timely received. Proposed HRL 957042, which serves to modify HRL 952420, is set forth in "Attachment C" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: November 23, 1994.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, April 9, 1993.
CLA–2 CO:R:C:T 952420 CC
Category: Classification
Tariff No. 6216.00.3225

HEBERT T. POSNER, ESQ.
WELTZ & POSNER
EMPIRE STATE BUILDING
350 Fifth Avenue, Suite 7610
New York, NY 10118

Re: Reconsideration of NYRL 871650; classification of gloves.

DEAR MR. POSNER:

This letter is in response to your request, on behalf of Gates-Mills, Inc., for reconsideration of New York Ruling Letter (NYRL) 871650, which concerned the classification of gloves. A sample was submitted for examination.

Facts:

The merchandise at issue, style 2936, is a woven nylon full-fingered glove. The outer shell has a green, brown, and black camouflage design, and approximately 1 millimeter of plastic foam is bonded to its inner surface. The palm side of the glove has a textile-backed vinyl overlay which extends across the palm to the thumb, index and middle finger. The permanent lining is composed of 2 millimeters foam and fiberfill with a knit nylon substrate. The glove has fourchettes, an elasticized wrist, applied knit cuffs, and a hook and clasp.

In NYRL 871650, dated March 20, 1992, we ruled that the subject merchandise is classified under subheading 6216.00.3225 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, other, with fourchettes, containing 50 percent or more by weight of cotton, man-made fibers or any combination thereof, subject to man-made fiber restraints. You contend that the this merchandise should be classified under a subheading that provides for gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts.

Issue:

Whether the merchandise at issue is classifiable as a glove specially designed for use in sports?

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

You contend that the merchandise at issue is a cold weather hunting glove and has several design features that show it is specially designed for use in hunting. First, you state that the glove has a tapered index finger for easier finger tip access to the trigger. Second, the glove features "action back," which allows greater hand flexibility and grip. Action back is created by two deep ½-inch pleats that open up to ½-inch and are spaced 2 inches apart. Third, the palm utilizes Gates' "Toughtek," a textured surface which imparts a non-slip grip and allows the glove to remain soft and pliable in all types of weather. Fourth, you state that the glove contains insulation which allows for warmth without inclusion of unwanted bulk. Fifth, the outer shell is available in a variety of camouflage designs.

Also, you have submitted advertisements which you state show that the merchandise at issue is sold as hunting gloves. Finally, you have submitted letters from Gates-Mills' customers which you state confirm that the merchandise is bought and sold as hunting gloves.

Customs Headquarters has issue several decisions relating to whether a glove is classifiable as a sports glove because it is specially designed for use in hunting. In Headquarters Ruling Letter (HRL) 083559, dated July 24, 1990, we stated the following:

> In spite of the claims in the affidavit, the sample gloves do not show a design for use in hunting. Although it is claimed that the gloves are marketed, advertised and sold as

hunting gloves, the only relevant design feature is additional insulation for protection against the cold. The other feature is that style HU002 has a trigger finger that is "tapered and slimmed down for a better feel on the trigger." It is our observation that having a more mobile index finger would be useful for many things other than the sport of hunting. It is also our observation that even with the tapering of the index finger the "feel" is not much improved due to the bulk of the gloves.

In HRL 088981, dated July 18, 1991, we ruled that the soft leather index or trigger finger of a glove was the component that showed that the glove was designed for use in hunting or shooting. In HRL 089769, dated October 8, 1991, we ruled that despite features for grip and camouflage, the glove had too much bulk and padding that would inhibit trigger sensitivity and movement; thus, the glove was not considered specially designed for hunting.

Despite the advertising and other supporting statements, the gloves at issue do not have the requisite design features for classification as hunting gloves. The glove is too bulky, containing padding and multiple layers, to be specially designed for hunting. Although the index finger is tapered, trigger sensitivity and movement are restricted by the bulk of the glove. Therefore, consistent with prior Customs rulings on similar merchandise, we find that the gloves at issue are not specially designed for hunting.

Holding:

The merchandise at issue is classified under subheading 6216.00.3225, HTSUSA, which provides for gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, other, with fourchettes, containing 50 percent or more by weight of cotton, man-made fibers or any combination thereof, subject to man-made fiber restraints. The rate of duty is 14 percent *ad valorem*, and the textile category is 631.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

NYRL 871650, dated March 20, 1992, is affirmed.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, October 8, 1991.

CLA–2 CO:R:C:T 089769 JS
Category: Classification
Tariff No. 6216.00.3225

T.A. GALANTOWICZ
DISTRICT DIRECTOR
7911 Forsythe Blvd., Ste. 625
St. Louis (Clayton), MO 63105

Re: Request for Internal Advice; hunting gloves; ski gloves: cold weather gloves.

DEAR MR. GALANTOWICZ:

This is in response to your request for internal advice, dated March 25, 1991, regarding the classification of Kmart gloves claimed to be designed for hunting.

Facts:

Glove style no. BUU 80–35–37 is a full-fingered glove with an outer shell fabric of 65 percent polyester/ 35 percent cotton which has a green, brown and tan camouflage design. The inner surface of the shell fabric has a thin layer of foam bonded to it. The next layer is a thicker piece of foam, over a plastic sheet in the dimensions of the glove, over more foam backed with a layer of Thinsulate (TM). There is a piece of textile-backed vinyl placed into the glove at the area of the knuckles.

The palm side of the glove has a plastic coated textile reinforcement which extends across the palm to the thumb, forefinger and middle finger. Fourchettes are sewn into the glove, and the cuff has an elasticized gathering on one side to which a hook is attached. The glove is bulky in its general appearance and fit.

The other glove, style no. 5812, is identical in appearance and design, except that the shell fabric is a solid neon orange color. This glove also has point-of-sale tags which advertise the glove as a waterproof "Taslon Hunting Glove."

Issue:

(1) Whether the present gloves show special design for hunting

(2) If these gloves are not considered hunting gloves, whether they may be classified as ski or cold weather gloves under the HTSUSA

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI 1 provides that classification shall be in accordance with the terms of the headings and any relevant section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may be applied, in the order of their appearance.

Counsel for Kmart Corporation asserts that the gloves at issue are classifiable as hunting gloves, or in the alternative, ski gloves, under the provision for gloves specially designed for sports, subheading 6216.00.46, HTSUSA. In support of this position, counsel presents the following:

> —the non-skid reinforcement, which includes the two shooting fingers, allows the hunter to grip his rifle without slipping, and to fire weapons in a safe and secure manner;
>
> —the outer shell of each glove has been specifically designed with hunting in mind: the neon orange color of one glove identifies the wearer during the busy season, and the camouflage print of the other glove allows the' hunter to conceal his hands when necessary;
>
> —the gloves are insulated for warmth and have a hook clasp

Since the subheading for textile hunting gloves, HTS 6216.00.46, is a use provision, it is important to consider the glove as a whole in order to determine its use as a hunting glove. The characteristics set forth above indicate some intent to design these gloves as hunting gloves. The considerable bulk of the gloves, however, counteracts the features for grip and camouflage/visibility. The thick padding throughout the gloves serves to inhibit crucial sensitivity and movement of the trigger finger, which is necessary to the handling of a gun. A hunter could otherwise discharge the firearm accidentally when attempting to insert his or her finger into the trigger housing. The permanent padding in this instance indicates that these gloves are not specially designed for hunting. Guns have several small or movable parts, and must be handled with care, therefore requiring better fit and grip of a glove designed for such use. The fact that the gloves are insulated and have a hook clasp is not dispositive of special design for use during hunting.

In the alternative, counsel argues that these gloves fit the criteria for ski gloves set forth in *Stonewall Trading Company v. United States*, 64 Cust. Ct. 482, C.D. 4023 (1970). As we have previously stated, we believe that presence of the four *Stonewall* criteria in a glove demonstrate *prima facie* that the subject merchandise is specially designed for skiing; however, failure of a glove to meet all of the *Stonewall* criteria will not prevent its classification as a ski glove, nor will satisfaction of the criteria automatically dictate classification as a ski glove.

Instead, the language of *Stonewall* must be interpreted in conjunction with the design for use of the manufactured article's. Again, it is important to consider the glove as a whole in order to determine its use as a ski glove. In the present instance, each of the *Stonewall*

requirements have been met in the glove at issue. However, the colors of the glove are those traditionally associated with hunting, which is also true of the forefinger reinforcement. Moreover, the hang tags on the neon orange glove, at least, indicate that the importer and/or manufacturer intended to market these gloves as hunting gloves, for use as such. Thus, we determine that the present merchandise is not principally used in or specially designed for the sport of skiing.

Holding:

For the reasons stated above, these gloves are classified as cold weather gloves under subheading 6216.00.3225, HTSUSA, which provides for gloves, mittens and mitts: impregnated, coated or covered with plastics or rubber: other: with fourchettes, containing 50 percent or more by weight of cotton, man-made fibers or any combination thereof: subject to man-made fiber restraints, textile category 631, dutiable at the rate of 14 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, the importer should contact the local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC

CLA–2 CO:R:C:T 957042 SK
Category: Classification
Tariff No. 6216.00.4600

WELTZ & POSNER
EMPIRE STATE BUILDING
350 Fifth Avenue, Ste. 7610
New York, NY 10118

Re: Modification of HRL 952420 (4/9/93); classification of a hunting glove under 6216.00.4600, HTSUSA; gloves specially designed for use in sports; tapered index finger; camouflage; non-slip palm; gloves marketed as hunting gloves; HRL 089769 (10/8/91).

DEAR MR. POSNER:

On April 9, 1993, Customs issued you, on behalf of your client, Gates-Mills, Inc., Headquarters Ruling Letter (HRL) 952420 in which we responded to your request for a reconsideration of New York Ruling Letter (NYRL) 871650, dated March 20, 1992. In HRL 952420, this office affirmed the holding in NYRL 871650 and classified the subject glove, referenced style number 2936, under subheading 6216.00.3225, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Customs determined that the subject glove was not specially designed for use in hunting, and therefore was not classifiable as a glove specially designed for use in sports under subheading 6216.00.4600, HTSUSA. Upon review, HRL 952420 is determined to be in error. Our analysis follows.

Facts:

The merchandise at issue, style 2936, is a woven nylon full-fingered glove. The outer shell has a green, brown and black camouflage design and approximately 1 millimeter of plastic foam is bonded to its inner surface. The palm side of the glove has a textile-backed vinyl overlay which extends across the palm to the thumb, index and middle finger. The permanent lining is composed of 2 millimeters foam and fiberfill with a knit nylon substrate. The glove has fourchettes, an elasticized wrist, applied knit cuffs, and a hook and clasp.

Issue:

Whether style 2936 is classifiable as a glove specialty designed for use in sports"?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI'S). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's.

Style 2936 is a cold weather glove possessing several features indicative of a special design for use in hunting. The glove has a tapered index finger for easier finger tip access to the trigger and has "action back," a design feature which allows greater hand flexibility and grip. "Action back" is created by two deep ½-inch pleats that open up and are spaced 2 inches apart. The palm on style 2936 also features "Toughtek," which is a textured surface which imparts a non-slip grip and allows the glove to remain soft and pliable in all types of weather. Lastly, the glove contains insulation which allows for added warmth without creating unwanted bulk. The outer shell is available in a variety of camouflage designs.

In HRL 089769, dated October 8, 1991, Customs recognized the following glove design characteristics as indictive of "some intent to design * * * gloves as hunting gloves." The cited features include:

— a non-skid reinforcement, which includes the two shooting fingers;
— a camouflage outershell or outershell with enhanced visibility;
— insulation that enhances warmth without creating excess bulk; and
— a hook and clasp closure.

Not only does style 2936 possess these features, thereby creating a presumption that these gloves were specially designed as hunting gloves, but they also possess additional features indicative of such design. As stated *supra,* the subject gloves feature a tapered index finger for easier finger tip access to the trigger and "action back" pleats which allow for greater hand flexibility.

The presumption that style 2936 has been specially designed as a hunting glove is further bolstered by the prodigious amount of advertising, trade information and related extrinsic evidence submitted by Gates-Mills, Inc. Several sporting goods magazines were submitted for Customs' examination which depict similar gloves being worn by hunters. In addition, Gates-Mills, Inc. employs a staff which works solely in the hunting trades and maintains over 700 accounts at hunting and sporting good stores.

Based on the foregoing evidence, it is this office's opinion that style 2936 has been specially designed for use in hunting and therefore warrants classification under subheading 6216.00.4600, HTSUSA, which provides for, *inter alia,* gloves specially designed for use in sports.

Holding:

HRL 952420 is modified.

Style 2936 is classifiable under subheading 6216.00.4600, HTSUSA, which provides for, "[G]loves, mittens and mitts: other: of man-made fibers: other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts * * *," dutiable at a rate of 5.5 percent *ad valorem*. There is no textile quota category applicable to the merchandise at this time.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 94–180)

HILSEA INVESTMENT LTD., AND CONDOR FARMS, INC., PLAINTIFFS *v.* RONALD BROWN, SECRETARY OF COMMERCE, AND U.S. DEPARTMENT OF COMMERCE, DEFENDANTS

Court No. 94–08–00487

[Plaintiffs' motion for a preliminary injunction is denied. Defendants' motion to dismiss for lack of jurisdiction is granted. Judgment entered for defendants.]

(Dated November 22, 1994)

Levinson & Associates (Lizbeth R. Levinson), for plaintiffs.
Frank W. Hunger, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(John S. Groat);* United States Department of Commerce *(Stacy J. Ettinger),* of counsel, for defendants.

MEMORANDUM AND ORDER

GOLDBERG, *Judge:* This matter comes before the Court on plaintiffs' motion for a preliminary injunction and defendants' motion to dismiss for either lack of jurisdiction or for failure to state a claim. The Court finds that it lacks jurisdiction to entertain this action. The Court therefore grants defendants' motion to dismiss.

BACKGROUND

This case involves an antidumping investigation of fresh cut roses from Ecuador conducted by defendant, the United States Department of Commerce ("Commerce"). Plaintiff, Hilsea Investment Ltd. ("Hilsea"), exports fresh cut roses from Ecuador to the United States. Co-plaintiff, Condor Farms, Inc., is the domestic importer of the roses.

On February 14, 1994, the U.S. Floral Trade Council filed petitions alleging that imports of fresh cut roses from Ecuador and Colombia at less than fair value cause or threaten to cause material injury to an American industry. On March 14, 1994, Commerce initiated antidumping investigations of fresh cut roses from Colombia and from Ecuador. On April 13, 1994, Hilsea filed a request for exclusion from any antidumping order that might result from the investigation of Ecuadorian roses.

On April 26, 1994, Commerce issued a memorandum in connection with its antidumping investigations of Colombian and Ecuadorian

roses. In the memorandum, Commerce discussed whether to investigate: (1) exporters requesting voluntary respondent status; and (2) exporters requesting exclusion from potential antidumping orders. Commerce recognized that in the past it had examined voluntary respondents to the extent practicable, as required by 19 C.F.R. § 353.14(c). Commerce determined, however, that it could not practicably examine voluntary respondents and exclusion requests in its investigations of Colombian and Ecuadorian roses.

Commerce proceeded to select mandatory respondents for its antidumping investigations of Colombian and Ecuadorian roses. Commerce determined that it had the administrative resources to investigate a total of 20 companies in the two investigations. Commerce attempted to distribute its limited resources equitably between the investigations, with a goal of examining 40% of the roses imported from each country.[1] Commerce found that it could achieve its goal by investigating 16 Colombian exporters and 3 Ecuadorian exporters. Commerce used its remaining resources to investigate one additional Ecuadorian exporter. In May 1994, Commerce issued mandatory pricing and cost of production questionnaires regarding calendar year 1993 to the four Ecuadorian rose exporters which it had selected. Hilsea was not among the selected respondents.

On May 9, 1994, Hilsea sent a letter to Commerce, requesting that Commerce reconsider its decision to deny all requests for exclusion and voluntary respondent status. Hilsea claimed that Commerce had disproportionately allocated resources to the Colombian investigation.

On May 26, 1994, Hilsea attempted to file a voluntary response to one section of the questionnaire. Commerce rejected Hilsea's response and sent Hilsea a copy of the April 26, 1994 memorandum discussing why it could not investigate voluntary respondents. Commerce further informed Hilsea that it would return any future voluntary responses that Hilsea attempted to submit.

On June 6, 1994, Hilsea sent Commerce a letter protesting Commerce's decision not to allow it to submit a questionnaire response in the antidumping investigation. Commerce again responded by sending Hilsea a copy of its April 26, 1994 memorandum.

Plaintiffs then filed suit in this court, asking the Court to compel Commerce either to accept Hilsea's questionnaire responses or to exclude Hilsea from the scope of any potential antidumping order. Defendants now request that the Court dismiss plaintiffs' action either for lack of jurisdiction or for failure to state a claim upon which relief can be granted.

DISCUSSION

Because defendants have challenged the jurisdiction of the Court, plaintiffs bear the burden of demonstrating that jurisdiction exists.

---

[1] Commerce determined that it did not have the resources to investigate 60% of the imports of the subject merchandise from each country, as is its common practice.

Lowa, Ltd. v. United States, 5 CIT 81, 83, 561 F. Supp. 441, 443 (1983) (citation omitted), *aff'd,* 2 Fed. Cir. (T) 27, 724 F.2d 121 (1984). Plaintiffs assert that the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(i).

The jurisdiction of this Court is set forth at 28 U.S.C. § 1581 (1988). Subsections (a) through (h) of this statute describe particular kinds of actions over which this Court has jurisdiction. Subsection (i) provides the Court with residual jurisdiction over importation actions for which Congress expected judicial review, but which are too varied for description. *Techsnabexport, Ltd. v. United States,* 16 CIT 420, 424, 795 F. Supp. 428, 433 (1992) (citation omitted). Subsection (i) comes into play only when the remedies provided by subsections (a) through (h) are unavailable or prove manifestly inadequate. *Miller & Co. v. United States,* 5 Fed. Cir. (T) 122, 124, 824 F.2d 961, 963 (1987) (citations omitted).

In certain cases, subsection (i) authorizes judicial review during the course of an investigation by Commerce. For example, Ir a party challenges the legality of the initiation of an administrative review, jurisdiction may exist during the review pursuant to subsection (i). In such a case, a party may seek to stop the allegedly unlawful review which will cost it considerable time, effort, and money. *Asociacion Colombiana de Exportadores de Flores v. United States,* 13 CIT 584, 586, 717 F. Supp. 847, 850 (1989), *aff'd,* 8 Fed. Cir. (T) 126, 903 F.2d 1555 (1990). It would be futile for the party to try to stop the administrative review from taking place after its completion. Therefore, judicial review after Commerce's final determination pursuant to 28 U.S.C. § 1581(c) is manifestly inadequate, and jurisdiction exists during the pendency of the administrative review pursuant to subsection (i). *Id.* at 588, 717 F. Supp. at 581; *see also Kemira Fibres Oy v. United States,* 18 CIT ____, 858 F. Supp. 229 (1994); *Carnation Enters. Pvt., Ltd. v. United States Dep't of Commerce,* 13 CIT 604, 719 F. Supp. 1084 (1989).

In most cases, however, subsection (i) does not provide the Court with jurisdiction to review Commerce's actions during the pendency of an investigation. *MacMillan Bloedel Ltd. v. United States,* 16 CIT 331, 332 (1992) (citations omitted). Parties must usually wait for a final determination by Commerce, and then seek judicial review pursuant to subsection (c). At that time, the Court can review interlocutory decisions subsumed in the final determination, including those relating to methodology or procedure. *Asociacion Colombiana de Exnortadores de Flores,* 13 CIT at 587, 717 F. Supp. at 850 (citation omitted). Piecemeal review of Commerce's interlocutory decisions prior to a final determination is discouraged because it is generally inefficient. *PPG Indus., Inc. v. United States,* 2 CIT 110, 112, 525 F. Supp. 883, 885 (1981). Furthermore, subsection (c) review may prove unnecessary in the event that the final determination does not adversely affect the prematurely complaining party. *Id.*

In past cases, this Court has recognized that jurisdiction usually does not exist to review interlocutory procedural decisions by Commerce. For

example, this Court has noted that Congress did not intend for it to review Commerce's decision to exclude an exporter from an antidumping investigation until review of Commerce's final determination. *Carnation Enternrises,* 13 CIT at 611, 719 F. Supp. at 1090 (1989) (citing H.R. Rep. No. 1235, 96th Cong., 2d Sess. 48, *reprinted in* 1980 U.S.C.C.A.N. 3729, 3760). Similarly, this Court has held that it may not review Commerce's decision to deny an exporter's request for exclusion from a countervailing duty order until it reviews Commerce's final determination. *MacMillan Bloedel Ltd.,* 16 CIT at 332–33.

In spite of such precedent, plaintiffs in this case essentially seek to have the Court review Commerce's decisions: (1) to exclude plaintiffs from serving as respondents in an antidumping investigation; and (2) to deny plaintiffs' request for exclusion from an antidumping order. Plaintiffs admit that such Interlocutory decisions "may be subsumed in a final determination by Commerce * * * and thus be subject to post-investigation judicial review under 28 U.S.C. § 1581(c)." *Plaintiffs' Response to Defendants' Motion to Dismiss ("Plaintiffs' Response")* at 2. Plaintiffs claim, however, that the delay inherent in seeking judicial review under subsection (c) makes relief under that subsection manifestly inadequate in this case. *Id.*

Plaintiffs' arguments that § 1581(c) relief will come too late does not warrant much discussion. *See MacMillan Bloedel Ltd.,* 16 CIT at 333. As noted, plaintiffs will have a meaningful opportunity to seek judicial review of Commerce's final determination, and the interlocutory procedural decisions subsumed therein, pursuant to subsection (c). Post-investigation review is not manifestly inadequate merely because plaintiffs will have to wait for Commerce to issue a final determination. It does not appear that Commerce will take an extraordinary or unjustified amount of time to complete its investigations in this case.[2] Nor is post-investigation review manifestly inadequate because plaintiff must pay deposits until review occurs; indeed, "paying deposits pending Court review is an ordinary consequence of the statutory scheme." *Id.* Because plaintiffs will have an adequate opportunity to seek relief pursuant to subsection (c), jurisdiction does not exist pursuant to subsection (i) in this case. Consequently, the Court will refrain from reviewing the interlocutory decisions of which plaintiffs complain at this time. Wherefore, it is hereby

ORDERED that plaintiffs' motion for a preliminary injunction is DENIED; and it is further

ORDERED that defendants' motion to dismiss for lack of jurisdiction is GRANTED. Judgment will be entered accordingly.

---

[2] In this case, coiaiaerce has 9iven notice that it will issue its final determination not later than January 26, 1995. 59 Fed. Reg. 50,725 (Oct. 5, 1994).

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C94/126 11/21/94 Carman, J.	Heraeus-Amersil, Inc.	82–10–01437	548.05 12.5%, 11.8% 540.67 25%, 23.1% or 21.3% Depending on the date of entry	547.53, etc. Various rates + refund of 25% of the difference in duty between the amount assessed and claimed the balance to be retained by defendant	Agreed statement of facts	New York (Newark) Rotosil, etc. or any other merchandise classified as optical glass under item 540.67, TSUS

[The Amendments to the Rules of the U.S. Court of Internationall Trade appearing below are being republished due to technical corrections. These Amendmetns will replace the Amendments to the Rule of the Court that were published November 23, 1994 in CUSTOMS BULLETIN, Vol. 28, No. 47, pp. 37–51.]

Rules of the U.S. Court of International Trade

EFFECTIVE NOVEMBER 1, 1980

(AS AMENDED, [JANUARY 1, 1993] JANUARY 1, 1995)

Amendments to Rules 1, 4, 11, 12, 13, 41, 50, 52, 54, 56.2, 58.1, 82, 89, Appendix of Forms, and new Rule 4.1 and new Forms 1A and 1B

October 5, 1994

Effective date:
January 1, 1995

Amendments to Rule 1

Rule 1 is amended as follows:

RULE 1. SCOPE OF RULES.

These rules govern the procedure in the United States Court of International Trade. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action. When a procedural question arises which is not covered by these rules, the court may prescribe the procedure to be followed in any manner not inconsistent with these rules. The court may refer for guidance to the rules of other courts. The rules shall not be construed to extend or limit the jurisdiction of the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 4

Rule 4 is amended as follows:

RULE 4. SERVICE OF SUMMONS AND COMPLAINT.

(a) *Summons—Service by the Clerk.* * * *

(1) * * *
(2) * * *
(3) * * *
(4) * * *
(5) * * *

(b) *Summons and Complaint—Service by Plaintiff.* * * *

(c) *Service.*

~~[(1) (A) A summons and complaint shall, except as provided in subparagraphs (B) and (C) of this paragraph, be served by any person who is not a party and is not less than 18 years of age.~~

~~(B) A summons and complaint shall, at the request of the party seeking service or such party's attorney, be served by a United States marshal or deputy United States marshal, or by a person specially appointed by the court for that purpose, only~~

~~(i) on behalf of a party authorized to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.~~

~~(ii) on behalf of the United States or an officer or agency of the United States, or~~

~~(iii) pursuant to an order issued by the court stating that a United States marshal or deputy United States marshal, or a person specially appointed for that purpose, is required to serve the summons and complaint in order that service be properly effected in that particular action.~~

~~(C) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (3) of subdivision (d) of this rule~~

~~(i) pursuant to the law of the State in which service is made for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or~~

~~(ii) by mailing a copy of the summons and complaint by first class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgement which shall be substantially in the form set forth in Form 14 of the Appendix of Forms and a return envelope, postage prepaid, addressed to the sender. If no acknowledgement of service under this subdivision of this rule is received by the sender within 20 days after the mailing, service of such summons and complaint shall be made under subparagraph (A) or (B) of this paragraph in the manner prescribed by subdivision (d)(1) or (d)(3).~~

~~(D) Unless good cause is shown for not doing so the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgement of receipt of summons and complaint.~~

~~(E) The notice and acknowledgement of receipt of summons and complaint shall be executed under oath or affirmation.~~

~~(2) The court shall freely make special appointments to serve summonses and complaints under paragraph (1)(B) of this subdivision of this rule.~~]

(1) Service of a summons and complaint may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff is authorized to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

(2) In an action commenced under 28 U.S.C. § 1581(d), the court is authorized to serve the summons and complaint where the action was commenced *pro se* and the plaintiff has failed to make service.

(d) *[~~Summons and Complaint Person to be Served.~~] Waiver of Service; Duty to Save Costs of Service; Request to Waive.*

[~~The summons and complaint shall be served together as follows:~~]

(1) A defendant who waives service of a summons does not thereby waive any objection to the jurisdiction of the court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h);

(B) shall be dispatched through first-class mail or other reliable means;

(C) shall be accompanied by a copy of the complaint;

(D) shall inform the defendant, by means of a text substantially in the form as set forth in Forms 1A and 1B of the Appendix of Forms, of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing. If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the wavier, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(e)[~~(1)~~] *Service Upon Individuals Within a Judicial District of the United States.*

Unless otherwise provided by federal law, service [U]upon an individual other than an infant or an incompetent person, may be effected in any judicial district of the United States:

(1) pursuant to the law of the state in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the state; or

(2) by delivering a copy of the summons and complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

[~~(f) *Amendment Of Proof Of Service.*~~

~~The court may allow proof of service of a summons or complaint to be amended at any time, in its discretion and upon terms as it deems just, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the amendment is allowed.~~]

(f) *Service Upon Individuals in a Foreign Country.*

Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice;

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

[~~(g) *Alternative Provisions for Service in a Foreign Country.*~~

~~(1) *Manner.* Whenever a statute of the United States or an order of court thereunder provides for service of a summons and complaint, or of a notice, or of an order in lieu of a summons and complaint, upon a party not an inhabitant of or found within the United States, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service and service is to be effected upon a party in a foreign country, it is sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivering to the individual personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is less than 18 years of age or who is designated by order of this court or by the foreign court.~~

~~(2) *Return.* Proof of service may be made as prescribed by subdivision (e) of this rule, or by the law of the foreign country, or by order of this court. When service is made pursuant to paragraph (1)(D) of this subdivision (g), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to this court.~~]

(g) *Service Upon Infants and Incompetent Persons.*

Service [U]upon an infant or an incompetent person[~~, by serving the summons and complaint~~] in a judicial district of the United States shall be effected in a manner prescribed by the law of the state [~~or place~~] in which the service is made for the service of summons or other like process upon any such defendant in action brought in the courts of general jurisdiction of that state [~~or place~~]. Service upon an infant or an incompetent person in a place not within any judicial district of the United States shall be effected in a manner prescribed by paragraph (2)(A) or (2)(B) of subdivision (f) or by such means as the court may direct.

(h) *Service Upon Corporations and Associations.*

Unless otherwise provided by federal law, service [U]upon a domestic or foreign corporation or upon a partnership or other unincorporated association [~~which~~] that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected:

(1) in a judicial district of the United States in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process, and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant[~~,~~] or

(2) in a place not within any judicial district of the United States in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph (2)(C)(i) thereof.

(i) [~~(4)~~] *Service Upon the United States, and Its Agencies, Corporations, or Officers.*

(1) Service [U]upon the United States[~~,~~] shall be effected by serving the Attorney General of the United States, by delivering or by mailing by registered or certified mail, return receipt requested, a copy of the summons and complaint to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

[~~(5)~~] (2) Service [U]upon an officer or agency of the United States[~~,~~] shall be effected by serving the United States, and by delivering or by mailing by registered or certified mail, return receipt requested, a copy of the summons and complaint to such officer or agency. If the agency is a corporation, the copy shall be delivered as provided in [~~paragraph (3) of this~~] subdivision [~~(d)~~] (h).

(j) [~~(6)~~] *Service Upon Foreign State or Local Governments.*

(1) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

(2) Service [U]upon a state, [~~or~~] municipal corporation, or other governmental organization [~~thereof~~] subject to suit[~~,~~] shall be effected by delivering a copy of the summons and complaint to [the] its chief executive officer [~~thereof~~] or by serving the

summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(k) *Territorial Limits of Effective Service.*

(1) Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant

(A) who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which service is made, or

(B) who is a party joined under USCIT R. 14 or 19 and is served at a place within a judicial district of the United States, or

(C) who is subject to the federal interpleader jurisdiction under 28 U.S.C. § 1335, or

(D) when authorized by a statute of the United States.

(2) If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.

(l) [~~(e)~~] *[Return.] Proof of Service*

If service is not waived, [T]the person [~~serving the process~~] effecting service shall make proof [~~of service~~] thereof to the [~~clerk of the~~] court [~~promptly and in any event within the time during which the person service must respond to the process~~]. If service is made by a person other than a United States marshal or deputy United States marshal, [~~such~~] the person shall make affidavit thereof. Proof of service in a place not within any judicial district of the United States shall, if effected under paragraph (1) of subdivision (f), be made pursuant to the applicable treaty or convention, and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. [~~If service is made under subdivision (e)(1)(C)(ii) of this rule, return shall be made by the sender's filing with the clerk of the court the acknowledgement received pursuant to such subdivision.~~] Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(m) [~~(h)~~] [~~*Summons and Complaint*~~] *Time Limit For Service.*

If [a] service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, [~~action is commenced and the party on whose behalf such service was required cannot show good cause why such service was not made within that period,~~] the court, [~~action shall be dismissed as to that defendant without prejudice~~] upon [~~the court's~~] motion or its own initiative [~~with~~] after notice to [~~such party or upon motion~~] the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision [~~shall~~] does not apply to service in a foreign country pursuant to subdivision [~~(g) of this rule~~] (f) or (j)(1).

PRACTICE COMMENT: * * *

PRACTICE COMMENT: * * *

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan 1, 1985; July 21, 1986, eff. Oct. 1, 1986; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

New Rule 4.1

New Rule 4.1 is as follows:

RULE 4.1. SERVICE OF OTHER PROCESS.

Process other than a summons as provided in USCIT R. 4 or subpoena as provided in USCIT R. 45 shall be served by a United States marshal, a deputy United States marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in USCIT R. 4(l).

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 11

Rule 11 is amended as follows:

RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS—SANCTIONS.

[~~Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his the attorney's individual name, whose address and telephone number shall be signed by an attorney authorized to do so on behalf of the Assistant Attorney General, Civil Division, Department of Justice. A pleading, motion, or other paper of an agency of the United States, authorized by statute to represent itself in judicial proceedings, may be signed by an attorney authorized to do so on behalf of the agency. A party who is not represented by an attorney shall sign his the party's pleading, motion, or other paper and state address and telephone number. Except when otherwise specifically prescribed by rule or statute, pleadings or other papers need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him the signer has read the pleading, motion, or other paper; that to the best of his the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorneys fee.~~]

(a) *Signature*

Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Every pleading, motion, or other paper of the United States shall be signed by an attorney authorized to do so on behalf of the Assistant Attorney General, Civil Division, Department of Justice. A pleading, motion, or other paper of an agency of the United States, authorized by statute to represent itself in judicial proceedings, may be signed by an attorney authorized to do so on behalf of the agency. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings or other papers need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the pleader or movant attorney or party.

(b) *Representation To Court*

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after any inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, of specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) *Sanctions*

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in USCIT R. 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) *Inapplicability To Discovery.*

Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of USCIT R. 26 through 37.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 12

Rule 12 is amended as follows:

RULE 12. DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED—BY PLEADING OR MOTION—MOTION FOR JUDGMENT ON THE PLEADINGS.

(a) *When Presented.*

(1) Unless a different time is prescribed in a statute of the United States.

(A) [T] the United States, or an officer or agency thereof, shall serve an answer to the complaint, or to a cross-claim, or a reply to counterclaim within 60 days after the service upon the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, of the pleading in which the claim is asserted; except that,

(i) [~~(1)~~] in an action described in 28 U.S.C. § 1581 (c), no answer shall be served or filed, and

(ii) [~~(2)~~] in an action described in 28 U.S.C. § 1581 (f), involving an order to make confidential information available under section 777 (c)(2) of the Tariff Act of 1930, the answer shall be served within 10 days after being served

with [~~the service of~~] the summons and complaint. For good cause shown, the court in any action may order a different period of time.

(B) Any other defendant shall serve an answer within 20 days after being served with the summons and complaint, or

(C) If service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(2) A party other than the United States or an officer or agency thereof served with a pleading stating a cross-claim against the party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.

(b) *How Presented.* * * *
(c) *Motion for Judgement on the Pleadings.* * * *
(d) *Preliminary Hearings.* * * *
(e) *Motion for More Definite Statement.* * * *
(f) *Motion [~~To~~] to Strike.* * * *
(g) *Consolidation of Defenses in Motion.* * * *
(h) *Waiver or Preservation of Certain Defenses.* * * *
(1) * * *
(2) * * *
(3) * * *

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 13

Rule 13 is amended as follows:

RULE 13. COUNTERCLAIM AND CROSS-CLAIM.

(a) *Counterclaims.* * * *
(b) *Counterclaim Exceeding Opposing Claim.* * * *
(c) *Counterclaim Against the United States.* * * *
(d) *Counterclaim Maturing or Acquired After Pleading.* * * *
(e) *Omitted Counterclaim.* * * *
(f) *Cross-Claim Against Co-Party.* * * *
(g) *Joinder of Additional Parties.* * * *
(h) *Separate Trials—Separate Judgments.* * * *
(i) *Demand for a Complaint.*

(1) Notwithstanding the pendency of the civil action on a Reserve or Suspension Calendar, in a civil action described in 28 U.S.C. § 1581 (a) or (b), for good cause shown, a defendant who wishes to proceed expeditiously in the action may file a motion demanding that the plaintiff file a complaint.

(2) The motion shall include, among other information, (A) a statement of the reasons for wanting to proceed at this time, (B) a proposed timetable for requiring the plaintiff to file a complaint if different from the time provided for in this rule and the reasons for a different time, and, in a suspended action, other scheduling information that the defendant believes necessary to enable the court to formulate an order removing a suspended action from a Suspension Calendar, and (C) a description of any counterclaim known to the defendant at the time the motion is filed that the defendant intends to assert in its answer.

(3) If an order granting a motion for a demand for a complaint is entered, plaintiff shall file its complaint within 30 days after the date of service of the order if plaintiff wishes to continue the action.

(4) If an order granting a motion for a demand for a complaint is entered and plaintiff does not voluntarily dismiss the action or fails to file a complaint, the clerk shall enter an order of dismissal without further direction from the court.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 41

Rule 41 is amended as follows:

RULE 41. DISMISSAL OF ACTIONS.

(a) *Voluntary Dismissal—Effect Thereof.*

(1) By plaintiff—By Stipulation. * * *
(2) By Order of Court. * * *

(b) *Involuntary Dismissal—Effect Thereof.*

(1) * * *
(2) Actions commenced pursuant to 28 U.S.C. § 1581(c) by the filing of a summons only are subject to dismissal for failure to file a complaint at the expiration of the applicable period of time prescribed by 19 U.S.C. § 1516a.
[~~(2)~~] (3) * * *
[~~(3)~~] (4) * * *
[~~(4)~~] (5) * * *

(c) *Insufficiency of Evidence.* * * *
(d) *Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim.* * * *
(e) *Costs of Previously Dismissed Action.* * * *

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; **Oct. 5, 1994, eff. Jan. 1, 1995.**)

Amendments to Rule 50

Rule 50 is amended as follows:

RULE 50. JUDGMENT AS A MATTER OF LAW IN ACTIONS TRIED BY JURY; ALTERNATIVE MOTION FOR NEW TRIAL; CONDITIONAL RULINGS.

(a) *Judgment as a Matter of Law.*

(1) If during a trial by jury a party has been fully heard [~~with respect to~~] on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to [~~have found~~] find for that party [~~with respect to~~] on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party [~~on any claim, counterclaim, cross-claim, or third-party claim~~] with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.
(2) * * *

(b) *Renewal of Motion for Judgement After Trial; Alternative Motion for New Trial.* * * *
(c) *Same; Condistional Rulings on Grant of Motion for Judgment as a Matter of Law.* * * *
(d) *Same; Denial of Motion for Judgment as a Matter of Law.* * * *
PRACTICE COMMENT: * * *

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; **Oct. 5, 1994, eff. Jan. 1, 1995.**)

Amendments to Rule 52

Rule 52 is amended as follows:

RULE 52. FINDINGS BY THE COURT; JUDGMENT ON PARTIAL FINDINGS.

(a) *Effect.* * * *

(b) *Amendment.* * * *

(c) *Judgment on Partial Findings.* If during a trial without a jury a party has been fully heard [~~with respect to~~] on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party [~~on any claim, counterclaim, cross claim or third party claim~~] with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court ma y decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 54

Rule 54 is amended as follows

RULE 54. JUDGMENTS.

(a) *Definition—Form.* * * *

(b) *Judgment Upon Multiple Claims or Involving Multiple Parties.* * * *

(c) *Demand for Judgment.* * * *

(d) *Attorney's Fees.*

(1) Claims for attorney's fees and related non-taxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(2) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(3) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in USCIT R. 52(a), and a judgment shall be set forth in a separate document as provided in USCIT R. 58.

(4) By court rules, the court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings.

(5) The provisions of subparagraphs (1) through (4) do not apply to claims for fees and expenses as sanctions for violations of these rules or under 28 U.S.C. § 1927.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 56.2

Rule 56.2 is amended as follows:

RULE 56.2. JUDGMENT UPON AN AGENCY RECORD FOR AN ACTION DESCRIBED IN 28 U.S.C. § 1581(c).

(a) *Proposed Briefing Schedule and Joint Status Report.* The judge may modify the following procedures as appropriate in the circumstances of the action, or the parties may suggest modification of these procedures.

Any proposed judicial protective order shall be filed within 30 days after the date of service of the complaint. Prior to the filing of the proposed judicial protective order, the moving party shall consult with all other parties to the action in accordance with USCIT R. 7(b) regarding the terms and conditions of the proposed judicial protective order.

Any motion to intervene as of right shall be filed within the time and in the manner prescribed by USCIT R. 24.

Any motion for a preliminary injunction to enjoin the liquidation of entries that are the subject of the action shall be filed by a party to the action within 30 days after the date of service of the complaint, or at such later time, for good cause shown. Notwithstanding the first sentence of this paragraph, an intervenor shall file a motion for a preliminary injunction no earlier than the date of filing of its motion to intervene and no later than 30 days after the date of service of the order granting intervention, or at such later time, but only for good cause shown. Prior to the filing of the motion, the moving party shall consult with all other parties to the action in accordance with USCIT R. 7(b).

(b) *Cross-motions.* * * *

(c) *Briefs.*

(1) * * *
(2) * * *

(d) *Time to Respond.* * * *

(e) *Hearing.* * * *

(f) *Partial Judgment.* * * *

(g) *Voluntary Dismissal—Time Limitation* * * *

(Added Sept. 25, 1992, eff. Jan. 1, 1993; and amended Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 58.1

Rule 58.1 is amended as follows:

RULE 58.1. STIPULATED JUDGMENT ON AGREED STATEMENT OF FACTS—GENERAL REQUIREMENTS.

An action described in 28 U.S.C. § 1581(a) or (b) be stipulated for judgment, at any time without brief or complaint or formal amendment of any pleading, by filing with the clerk of the court a stipulation for judgment on agreed statement of facts, signed by the parties or their attorneys, together with a proposed stipulated judgment. [~~Within 5 days after a proposed stipulation for judgment on agreed statement of facts is served upon the Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, the plaintiff shall advise the court in writing of the date of that service.~~] The proposed stipulated judgment on agreed statement of facts shall be substantially in the form set forth in USCIT Form 9 of the Appendix of Forms.

(Added Nov. 4, 1981, eff. Jan. 1, 1982; and amended Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 82

Rule 82 is amended as follows:

RULE 82. CLERK'S OFFICE AND ORDER BY THE CLERK.

(a) *Business Hours and Address.* * * *

(b) *Motions, Orders and Judgments.* The clerk may dispose of the following types of motions and sign the following types of orders and judgments without submission to the court, but the clerk's action may be suspended, altered or rescinded by the court for good cause shown:

(1) Motions on consent in unassigned cases extending the time within which to plead, move or respond.

(2) Motions on consent in unassigned cases for the discontinuance or dismissal of the action.

(3) Orders of dismissal upon notice as prescribed by Rules 41(a)(1) and 41(b)[(2)](3).

(4) Orders of dismissal for lack of prosecution as prescribed by Rules 83(c) and 85(d).

(5) Consent motions to intervene as of right made within the 30-day period provided in Rule 24(a).

(6) Orders of dismissal for failure to file a complaint as prescribed by Rule 13(i)(4).

(7) Orders of dismissal for failure to file a complaint as prescribed by Rule 41(b)(2).

(c) *Clerk-Definition.* * * *

(d) *Filing of Papers.* * * *

PRACTICE COMMENT: * * *

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 89

Rule 89 is amended as follows:

RULE 89. EFFECTIVE DATE.

(a) *Effective Date of Original Rules.* * * *

(b) *Effective Date of Amendments.* * * *

(c) *Effective Date of Amendment.* * * *

(d) *Effective Date of Amendments.* * * *

(e) *Effective Date of Amendments.* * * *

(f) *Effective Date of Amendments.* * * *

(g) *Effective Date of Amendments.* * * *

(h) *Effective Date of Amendments.* * * *

(i) *Effective Date of Amendments.* * * *

(j) *Effective Date of Amendments.* * * *

(k) *Effective Date of Amendments.* * * *

(l) *Effective Date of Amendments.* * * *

(m) *Effective Date of Amendments.* The amendments adopted by the court on October 5, 1994, shall take effect on January 1, 1995. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Added Nov. 4, 1981, eff. Jan. 1, 1982; and amended Dec. 29, 1982, eff. Jan. 1, 1983; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; Dec. 3, 1986, eff. Mar. 1, 1987; Apr. 28, 1987, eff. June 1, 1987; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Mar. 1, 1991, eff. Mar. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

New Form 1A

New Form 1A reads as follows:

FORM 1A. NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS.

TO: _____(A)_____
[as _____(B)_____of _____(C)]

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States Court of International Trade and has been assigned Court Number _____(D)_____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of the complaint. The cost of service will be avoided if I receive the signed copy of the waiver within _____(E)_____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Rules of the Court of International Trade and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this_____day of _____, _____.

_____
Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

Notes:
A—Name of individual defendant (or name of officer or agent of corporate defendant)
B—Title, or other relationship of individual to corporate defendant
C—Name of corporate defendant, if any
D—Court Number of Action
E—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

New Form 1B

New Form 1B reads as follows:

FORM 1B. WAIVER OF SERVICE OF SUMMONS.

TO: _____(name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of _____(caption of action)_____, which is Court Number _____(docket number)_____ in the United States Court of International Trade. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by USCIT R. 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under USCIT R. 12 is not served upon you within 60 days after _____(date request was sent)_____, or within 90 days after that date if the request was sent outside the United States.

_____ _____

Date Signature

Printed/typed name:_____

[as _____]

[of _____]

To be printed on reverse side of the waiver form
or set forth at the foot of the form:
Duty to Avoid Unnecessary Costs of Service of Summons

USCIT R. 4 requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the court lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Appendix of Forms

The Appendix of Forms is amended as follows:

GENERAL INSTRUCTIONS

1. * * *
2. * * *
3. * * *
4. * * *
5. * * *
6. * * *
7. * * *
8. * * *

SPECIFIC INSTRUCTIONS

Form 1 * * *

Form 1A

A Notice of Lawsuit and Request for Waiver of Service of Summons which, as previously prescribed by Rule 4(d), shall be addressed directly to a defendant and sent by first-class mail or other reliable means. The defendant shall be allowed a reasonable period of time to return the waiver (Form 1B).

Plaintiff shall provide the defendant with a stamped and addressed return envelope. Plaintiff also shall provide the defendant with a copy of the waiver for defendant's records.

Upon receipt of the signed waiver, plaintiff shall file the waiver with the court.

If the waiver is timely returned by the defendant, that defendant, if located within any judicial district in the United States, is not required to serve an answer until 60 days after the date on which the request for the waiver was sent.

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Form 1B

A Waiver of Service of Summons which, as prescribed by Rule 4(d), shall be returned to a plaintiff who has requested a defendant to waive service.

If a defendant, after being notified of an action and asked to waive service, fails to do so, that defendant will be required to bear the cost of service unless good cause can be shown for its failure to sign and return the waiver.

If the waiver is timely returned by the defendant, that defendant, if located within any judicial district of the United States, is not required to serve an answer until 60 days after the date on which the request for the waiver was sent.

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Form 2 * * *
Form 3 * * *
Form 4 * * *
Form 5 * * *
Form 6 * * *
Form 7 * * *
Form 8 * * *
Form 9 * * *
Form 10 * * *
Form 11 * * *
Form 12 * * *
Form 13 * * *
Form 14 RESERVED

~~[A Notice and Acknowledgment of Receipt of Summons and Complaint which, as prescribed by Rule 4(c)(1)(C)(ii), may be served by mailing two copies of the Acknowledgment along with a copy of the summons and complaint. The documents must be sent by first class mail, postage prepaid, to the person to be served. The Acknowledgment shall be substantially in the form set forth in Form 14. There must be return envelope postage prepaid and addressed to the sender enclosed with the documents.~~

~~The receiving party must complete the Acknowledgment portion of the form and return one copy of the form to the sender within 20 days. The Acknowledgment must be signed and dated by the receiving party.~~

~~If the receiving party is served on behalf of a corporation, unincorporated association, of other entity, the receiving party must indicate under the signature, the relationship to the entity.~~

~~If service was received on behalf of another person and the receiving party is authorized to receive process, the authority must be indicated under the signature.~~

~~If the Acknowledgment is not completed and returned within 20 days the receiving party (or the party for whom process was received) may be required to pay any expenses incurred in serving the summons and complaint, as prescribed by Rules 4(c)(1)(C)(ii) and 4(c)(1)(D).~~

~~If the Acknowledgment is not completed and returned, the complaint must still be answered within 20 days. Failure to do so will result in judgment by default for the relief demanded in the complaint.]~~

(As added July 23, 1993, eff. July 23, 1993; and amended Oct. 5, 1994, eff. Jan. 1, 1995.)

Form 15 * * *
Form 16 * * *

RESERVED

FORM 14

[UNITED STATES COURT OF INTERNATIONAL TRADE

_____ Plaintiff,

v.

_____ Court No.

_____ Defendant.

NOTICE AND ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

TO: _____

_____

(insert the name and address of the person to be served.)

The enclosed summons and complaint are served pursuant to Rule 4(c)(1)(C)(ii) of the Rules of the United States Court of International Trade.

You must complete the acknowledgment part of this form and return one copy of the completed from to the sender within 20 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on (insert date) _____.

_____

Signature

_____

Date of Signature

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and complaint in the above captioned matter at (insert address) _____.

_____

Signature

_____

Relationship to Entity/Authority to Receive Service of Process

_____

Date of Signature

(Added Oct. 3, 1984, eff. Jan. 1, 1985, and amended June 19, 1985, eff. Oct. 1, 1985; Oct. 5, 1994, eff. Jan 1, 1995.)

Index

Customs Bulletin and Decisions
Vol. 28, No. 50, December 14, 1994

U.S. Customs Service

Treasury Decisions

General Notices

U.S. Court of International Trade

Slip Opinions

Abstracted Decisions

Rules of the U.S. Court of International Trade

U.S. G.P.O. 1994–301–610–00014